



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2013

Mr. Zach Brady
For the Texas Boll Weevil Eradication Foundation, Inc.
Brady & Hamilton, L.L.P.
1602 13th Street
Lubbock, Texas 79401

OR2013-17141

Dear Mr. Brady:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 501026.

The Texas Boll Weevil Eradication Foundation, Inc. (the "foundation"), which you represent, received a request for the comprehensive listing and the contact information of all participants in the Texas Boll Weevil Foundation Eradication Program in a specified zone. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the foundation has redacted portions of the submitted information. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the foundation should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

§ 552.101. Section 552.101 encompasses information protected by federal law. You state the information at issue is confidential under section 8791(b) of title 7 of the United States Code. Section 8791 states, in relevant part:

(b) Limitation on disclosures

...

(2) Prohibition

Except as provided in paragraphs (3) and (4), the Secretary [of Agriculture (the "Secretary")], any officer or employee of the Department of Agriculture [(“USDA”)], or any contractor or cooperator of the [USDA], shall not disclose—

(A) information provided by an agricultural producer or owner of agricultural land concerning the agricultural operation, farming or conservation practices, or the land itself, in order to participate in programs of the [USDA]; or

(B) geospatial information otherwise maintained by the Secretary about agricultural land or operations for which information described in subparagraph (A) is provided.

(3) Authorized disclosures

(A) Limited Release of Information

If the Secretary determines that the information described in paragraph (2) will not be subsequently disclosed except in accordance with paragraph (4), the Secretary may release or disclose the information to a person or Federal, State, local, or tribal agency working in cooperation with the Secretary in any [USDA] program—

...

(ii) when responding to a disease or pest threat to agricultural operations, if the Secretary determines that a threat to agricultural operations exists and the disclosure of information to a person or cooperating government entity is necessary to assist the Secretary in responding to the disease or pest threat as authorized by law.

(4) Exceptions

Nothing in this subsection affects—

(A) the disclosure of payment information (including payment information and the names and addresses of recipients of payments) under any [USDA] program that is otherwise authorized by law;

(B) the disclosure of information described in paragraph (2) if the information has been transformed into a statistical or aggregate form without naming any—

(i) individual owner, operator, or producer; or

(ii) specific data gathering site; or

(C) the disclosure of information described in paragraph (2) pursuant to the consent of the agricultural producer or owner of agricultural land.

7 U.S.C. § 8791(b)(2), (3)(A)(ii), (4). Thus, information subject to section 8791(b)(2) is confidential, except in certain instances. You indicate the requested information was collected by the USDA pursuant to section 8791(b)(2) of title 7 of the United States Code. We note the Secretary can release information collected under section 8791(b)(2) to a state agency working in cooperation with the Secretary in a USDA program when responding to a disease or pest threat to agricultural operations, if the Secretary determines the threat exists and release is necessary to respond to the disease or pest threat. *See id.* § 8791(b)(3)(A)(ii). The foundation is designated by the Texas Department of Agriculture as the “entity to plan, carry out, and operate eradication and diapause programs to eliminate the boll weevil[.]” *See* Agric. Code § 74.1011(a). You explain the information at issue was provided to the foundation under a USDA Memorandum of Understanding (“MOU”) between the USDA’s Farm Service Agency (the “FSA”), the USDA’s Animal and Plant Health Inspection Service (the “APHIS”), the foundation, and the Texas Department of Agriculture. The MOU states the APHIS has the federal lead authority to cooperate with a state agency to carry out measures “to detect, control, eradicate, suppress, prevent, or retard the spread of plant pests, including boll weevils.” Further, the MOU states the APHIS recognizes the foundation as a cooperator necessary to respond to the existing boll weevil pest threat to agricultural operations, and has informed the FSA certain data, including producer/land owner and business entity name, full address, and phone number, may be shared with the foundation. Additionally, you explain the information at issue was provided to the foundation to utilize in conducting boll weevil eradication activities. Thus, we find the foundation to be a cooperating entity responding to a pest threat to agricultural operations for purposes of section 8791(b)(3)(A)(ii). Further, we find the information at issue was provided to the

foundation for the purpose of responding to the boll weevil pest threat. It does not appear the exceptions to confidentiality apply. Accordingly, we find the information at issue is confidential under section 8791(b)(2) of title 7 of the United States Code and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/dls

Ref: ID# 501026

Enc. Submitted documents

c: Requestor
(w/o enclosures)