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Texas General Land Office

James M. Phillips
General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization

Garry Mauro
Commissioner

~~RO 95~~
RO-372

June 5, 1991

Ms. Madeleine Johnson
Chair, Opinion Committee
Attorney General's Office
Supreme Court Building
Austin, Texas 78701

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Opinion Committee

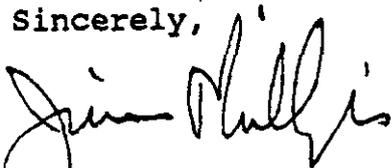
Dear Ms. Johnson:

Enclosed is a copy of an Open Records Request Commissioner Mauro had hand-delivered on May 10, 1991 to the Attorney General's executive offices.

While speaking with your office regarding another matter, I asked about this request and was informed that you apparently had no record of this request.

Please advise us if the status report was incorrect or if we need to take any additional action.

Sincerely,



Jim Phillips
General Counsel
Legal Services Division

JP/rs

Enclosure

ACCOMPANIED BY ENCLOSURES --
FILED SEPARATELY



May 10, 1991

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78711-2548

Dear General Morales:

As a part of our statutory mandate, the General Land Office leases public school lands for mineral development. In the course of fulfilling its various responsibilities related to this mineral development, the agency receives a great deal of sensitive, often proprietary, information which enables my staff to evaluate tracts for potential lease or sale, to prepare bid packages, to evaluate pooling requests, or to monitor lease compliance.

Of particular concern to the agency is the geological and geophysical data in its custody which may be subject to requests under the Open Records Act. This information may be acquired as a condition of a lease, by voluntary submission or at the request of the pooling committee, or at the request of the Commissioner. The agency has electric and other well logs, wireline surveys and other geological and geophysical information and data dating back 50 years, for which requests are becoming more and more frequent. The statutory authority for determining the proper response to these requests is confusing, if not actually contradictory, especially in regard to well logs.

The Open Records Act, in Sec. 3(a)(13), provides for an exception to the general disclosure obligation for:

"(13) geological and geophysical information and data, including maps concerning wells, except information filed in connection with an application or proceeding before any agency or an electric log confidential under Subchapter M, Chapter 9, Natural Resources Code." (emphasis added)

Gary Mauro
Commissioner
General Land Office

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701
(512) 463-5256

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Other Open Records Act exceptions in Sec. 3(a)(1) (confidential by law), Sec. 3(a)(4) (unfair advantage to competitors), and Sec. 3(a)(10) (trade secret and financial information) also have some application to this matter.

TEX. NAT. RES. CODE §91.553 provides that an electric log submitted to the Railroad Commission is open and available to the public unless a written request to maintain its confidentiality is filed by the party submitting the log. If appropriate requests are filed, the log may be kept in a confidential status for up to five years. This provision covers all wells and all lessees operating on Permanent School Fund land although its scope is clearly statewide, consistent with RRC regulatory jurisdiction.

The same or similar geological and geophysical data may be provided to this agency to fulfill a term or condition of a state lease, in which case it may or may not become a part of the lease file. In some instances, the information is submitted with understanding that it will be maintained in confidence by the Commissioner and may in fact be marked "Confidential" by the lessee to assure this treatment.

The GLO Pooling Committee, composed of one representative each from the GLO Petroleum and Minerals division, the Attorney General's Office, and the Governor's Office, reviews pooling and unitization applications involving state land. Based on the best information available, the committee evaluates the application and makes recommendations to the School Land Board for action on these applications. The information considered by the committee includes geologic and geophysical data, which is summarized in the committee recommendation. The data itself is not presented to the School Land Board when it considers the application. A sample pooling committee report is attached. (See Attachment I). For this reason, this information has not been considered to be public information, even though it may be retained by the Petroleum and Minerals division to enable it to evaluate other tracts for future leasing, to set oil and gas royalty and bonus terms, or to provide other baseline mineral management data.

The agency has received a written request from Walter Oil and Gas Corporation for "a copy of the 1" correlation log" (a basic electric log) for a well drilled on a state tract (SL 69027) in 1974. (See Attachment II). The well was drilled by Mobil Oil Corporation, who submitted the log in question in 1974 to fulfill requirements of its state lease agreement. It was not submitted

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in conjunction with any application or other proceeding. The log was clearly marked "CONFIDENTIAL" by the operator prior to its receipt by the agency. Mobil Oil objects to its release to Walter Oil.

The particular log in question illustrates some of the inconsistent results that may result from the application of the various statutes. It may be available from the Railroad Commission, but not from the General Land Office. It may not be available from the Land Office if submitted in confidence to fulfill a lease requirement, but the same log might be available if submitted in conjunction with a pooling application that included the same tract of state land.

In an attempt to comply with the Open Records Act, the Natural Resources Code, and the public policy of protecting the sensitive, proprietary data of our lessees, the General Land Office has developed a policy for response to requests for geological and geophysical information which protects all such data from disclosure, regardless of the source or use of the information, except (1) electric logs more than five years old and (2) electric logs less than five years old which are available to the public from the Railroad Commission.

I request your formal opinion on the validity of the disclosure policy of the General Land Office by your answering the following questions:

1. Does the statutory scheme set out in TEX. NAT. RES. CODE §91.553 for handling electric logs by the Railroad Commission apply to their handling by the General Land Office? For instance, if a log is available from the Railroad Commission after one year, may the General Land Office release the same log after the same period of time?
- 2a. Assuming the answer to the first question is "Yes", is the five year period of confidentiality provided in Sec. 91.553 a maximum period during which electric well logs can be maintained in confidence so that any log submitted to the GLO before 1986 must be made available to the public?
- b. Does it make any difference that the information was submitted to and received by the Commissioner as proprietary information with the expectation that it would be held in confidence, given the confidentiality limitation contained in §91.553?

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- c. Does the existence of interpretation of the raw data on the log by either the company submitting the log or by GLO staff affect the disclosability of the log? May the interpretative notations be deleted if disclosure of the log is required?
3. Do the Open Records Act exceptions for proprietary data, such as trade secrets and information which would give unfair advantage to competitors, limit the disclosure of well logs and other geological and geophysical data submitted to the General Land Office Pooling Committee, in connection with the consideration of a pooling application, if retained by the GLO for other uses, or does §3(a)(13) compel the disclosure of such data?

Your assistance in resolving these questions will facilitate a prompt and appropriate response to requests of this nature by this office. We are requesting that Mobil state its own position on these questions and will make the Texas Mid-Continent Oil and Gas Association, the Texas Independent Producers and Royalty Owners Association and the Permian Basin Petroleum Association aware of this request.

Sincerely,



Garry Mauro
Texas Land Commissioner

GM/rs

cc: Mobil Oil
TMOGA
TIPRO
PBPA