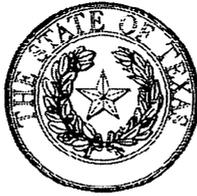


Executive Director  
Randall H. Riley



RECEIVED  
NOV 18 2003  
OPEN RECORDS DIVISION

CHAIRMAN  
Tom Beard  
COMMISSIONERS  
Stuart S. Coleman  
James S. Duncan  
Bob Jones  
Victor E. Leal  
Mary Ann Newman-Buckley  
Brenda Pejovich

**Texas Building and Procurement Commission**

November 18, 2003

VIA HAND DELIVERY

The Honorable Greg Abbott  
Attorney General of Texas  
POB 12548  
Austin, TX 78711-2548

**RQ-0132-6A**

RECEIVED  
NOV 20 2003

OPINION COMMITTEE

FILE # ML-43343-08  
I.D. # 43343

**RE: WHETHER TEXAS PARKS AND WILDLIFE CODE §§11.030, 31.0390, AND 31.0391 CONSTITUTE "OTHER LAW" FOR PURPOSES OF TEXAS GOVERNMENT CODE, §552.262(a)**

Dear General Abbott:

The Texas Building and Procurement Commission (TBPC) received a complaint against the Texas Parks and Wildlife Department (TPWD) regarding charges for public information. The complainant, John Tedesco, of the San Antonio Express-News, alleges that TPWD is attempting to overcharge for copies of public information because the charges proposed by TPWD were not determined in accordance with Texas Government Code, §552.262.

**Background**

On July 23, 2003, Mr. Tedesco requested from the Texas Parks and Wildlife Department "all information contained in the department's boating registry database." On July 24, Mr. Tedesco modified his request to include "the active boating registry database, the motor registry, and the boating accident database."

On August 7, TPWD sent your office a letter pursuant to §552.301, "Request for Attorney General Decision." The information requested, ownership records, is covered by Texas Parks and Wildlife Code, §31.039, which states that the records are public. On August 14, TPWD clarified that it was not actually seeking to withhold the information, and withdrew that part of its request for ruling. Instead, TPWD asked your office to determine whether it is authorized to charge in accordance with the provisions of the Texas Park and Wildlife Code, §11.030. Additionally, TPWD asked that if your office determined that its request was not appropriate under §552.301, to consider issuing an opinion pursuant to §552.011. On October 8 your office declined to issue a decision under either section.

The Honorable Greg Abbott  
November 18, 2003  
Page 2

### **Texas Parks and Wildlife Code**

The Texas Parks and Wildlife Code, Chapter 11, §11.030 describes what is to be considered customer information. The section also states that Texas Government Code, Chapter 552, commonly known as the Public Information Act, does not apply to the customer information described by the section, and authorizes the Texas Parks and Wildlife Department to adopt rules regarding the release, use, and sale of mailing lists consisting of customer information. The section became effective August 28, 1995.

Texas Parks and Wildlife Code, Chapter 31, commonly known as the Water Safety Act, states that "all ownership records of the department made or kept under this chapter are public records." See *TPW Code*, §31.039. The section became effective September 1, 1975. Section 31.0391, added by the 74<sup>th</sup> Legislature (1995), states that an owner's name or address may not be released unless a written request contains the requestor's name and address, and states that the use of the information is for a lawful purpose. The section became effective September 1, 1995. As enacted, the section did not mention applicable charges for the information.

Section 31.039 was amended by HB 2926, enacted by the 78<sup>th</sup> Legislature, Regular Session (2003). The amendment states: "The commission may by rule charge a fee for access to ownership records made or kept under this chapter." The subsection became effective September 1, 2003. TPWD is in the process of adopting rules to implement the amendment.

### **Texas Government Code, Chapter 552**

Texas Government Code, Chapter 552, §552.262(a) mandates the General Services Commission, now the Texas Building and Procurement Commission, to "adopt rules for use by each governmental body in determining charges for providing copies of public information under this subchapter ..." The subsection further states that "the rules adopted by the General Services Commission shall be used by each governmental body in determining charges for providing copies of public information..., except to the extent that other law provides for charges for specific kinds of public information." (Emphasis added)

### **Request for opinion**

Because Mr. Tedesco's amended request, dated July 24, was received by TPWD before the amendment became effective, TBPC requests that your office provide guidance on the following questions:

- (1) Are the TPWD vessel and outboard motor ownership records considered to be "customer information" of a person "who purchases customer products, licenses, or services from the department" pursuant to the description established by TPW Code, §11.030?

The Honorable Greg Abbott

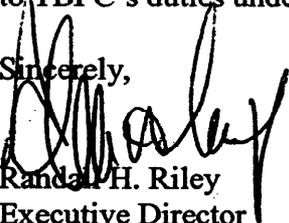
November 18, 2003

Page 3

(2) If the answer to (1) is "Yes", does TPW Code, §11.030 qualify as "other law" for purposes of TGC, §552.262(a)?

If you need more information, please feel free to contact Ms. Hadassah Schloss, TBPC's Open Records Administrator, at 475-2497. Ms. Schloss is handling Mr. Tedesco's complaint pursuant to TBPC's duties under TGC, §552.269.

Sincerely,



Randall H. Riley  
Executive Director

RHR:hs

cc: John Tedesco  
San Antonio Express-News  
POB 2171  
San Antonio, TX 78297

Ann Bright  
General Counsel  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, TX 78744-3291

---