



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1997

Mr. Kevin McCalla
Director, Legal Division
Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR97-0991

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32030.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "any filings made with [the commission's] local office regarding refinery maintenance programs for the Mobil Oil Refinery at Beaumont." The request is limited to "filings received by your office during the last 15-30 days relating to these activities." You state that the documents responsive to this request consist of three Mobil Oil Maintenance Notification Reports. You do not raise any exception under the Open Records Act to required public disclosure and, in fact, contend that the information is not protected under section 382.041 of the Government Code and section 552.110 of the Government Code. However, pursuant to section 552.305(a), you have declined to release the responsive information for the purpose of requesting an attorney general decision.

Pursuant to section 552.305, we notified Mobil Oil Corporation ("Mobil") of the request. See Gov't Code § 552.305; Open Records Decision No. 542 (1990). Mobil responded to our notification by asserting that the requested information is protected under section 552.101 of the Government Code, in conjunction with section 382.041 of the Health and Safety Code, and sections 552.104 and 552.110 of the Government Code.

Section 552.110 excepts from disclosure trade secrets and commercial or financial information obtained from a person and confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), the attorney general concluded that the case of *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), which

interprets exemption four of the federal Freedom of Information Act ("FOIA"), was a "judicial decision" for purposes of section 552.110. To succeed with a claim under the commercial or financial information portion of section 552.110, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. Open Records Decision No. 639 (1996) at 4.

We have reviewed Mobil's arguments regarding the second prong of section 552.110. We agree that Mobil has established that it faces competition and that substantial injury would result from release of the requested information.¹ The commission must therefore withhold the requested documents.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 32030

¹Because we conclude that the commission must withhold the requested information under section 552.110 of the Government Code, we do not address Mobil's other arguments for withholding the requested information.

²In its original request for a ruling to the office, the commission argued that section 552.110 did not except the requested records from required public disclosure, in part relying on Open Records Decision No. 592 (1991). Subsequent to receipt of the commission's brief on this matter, we issued Open Records Decision No. 639 (1996), which effectively overruled Open Records Decision No. 592 (1991) regarding the analysis this office uses to determine the applicability of the second prong of section 552.110. As the commission has not asserted to this office that the information is not "commercial or financial information" excepted from disclosure under section 552.110 and Open Records Decision No. 639 (1996), we do not address the commission's earlier arguments regarding this provision.

Enclosures: Submitted documents

cc: Mr. Tony Mercandetti
Knight-Ridder Financial News
75 Wall Street, 22nd Floor
New York, New York 10005-2890
(w/o enclosures)

