



June 13, 2002

Ms. Amanda Crawford
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2002-3209

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164315.

The Office of the Attorney General (the "OAG") received a request for certain information the OAG received in its investigation of the proposed merger between Houston Pipeline Company ("HPL"), a subsidiary of Enron Corporation, and American Electric Power Company ("AEP"). You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. Furthermore, you indicate that the release of the requested information may implicate the proprietary rights of Enron and AEP. Accordingly, you notified Enron and AEP of the request pursuant to section 552.305 of the Government Code. In turn, we have received correspondence from AEP's representative. We have considered all of the submitted arguments and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 15.10(i) of the Business and Commerce Code provides in part:

(1) Except as provided in this section or ordered by a court for good cause shown, no documentary material, answers to interrogatories or transcripts of oral testimony, or copies or contents thereof, shall be available for examination or used by any person without the consent of the person who produced the material, answers, or testimony and, in the case of any product of discovery, of the person from whom the discovery was obtained.

Bus. & Com. Code § 15.10(i)(1). This provision generally requires the OAG to withhold from required public disclosure all documentary material, answers to interrogatories, and transcripts of oral testimony obtained pursuant to a Civil Investigative Demand (“CID”) made under section 15.10 of the Business and Commerce Code. The OAG is allowed to release the information only in a limited number of circumstances, as outlined in section 15.10(i). You state that, under section 15.10, the OAG issued a CID to Enron on March 23, 2001, requesting information regarding the merger between HPL and AEP. After the OAG issued the CID, you state that the OAG then engaged in a process of negotiating with the recipient of the CID concerning “the scope of the CID . . . and the format of the information to be produced.” You indicate that the submitted information was produced pursuant to these negotiations. Finally, you state that none of the permissive exceptions allowing for the disclosure of information submitted to the OAG pursuant to a CID are applicable. Based on your argument and our review of the submitted information, we conclude that you must withhold the information from disclosure under section 552.101 of the Government Code in conjunction with section 15.10 of the Business and Commerce Code.¹ Based on this finding, we need not reach the remainder of the submitted arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body

¹You request that this office issue a previous determination allowing the OAG to withhold this type of information from future requestors. *See* Open Records Decision No. 673 (2001). We decline to issue such a ruling at this time.

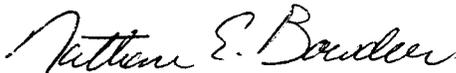
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 164315

Enc: Submitted documents

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