



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 16, 2004

Ms. Veronica Ocanas  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2004-0393

Dear Ms. Ocanas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194635.

The City of Corpus Christi (the "city") received a request for all information pertaining to oil and gas activity by certain companies in a specified area. You state that the city has released some information but does not maintain information on one of the specified companies.<sup>1</sup> In addition, you claim that release of the requested information may implicate the proprietary interests of third parties under section 552.110 of the Government Code, although you take no position as to whether the information is so excepted. You state, and provide documentation showing, that you notified Exxon Company, USA ("Exxon"), Headington Oil Company ("Headington"), Pittencreiff America, Inc. ("Pittencreiff"), Texas Crude Energy, Inc. ("Texas Crude Energy"), and Manti Resources, Inc. ("Manti Resources") of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). You state that Texas Crude

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<sup>1</sup> We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

Energy has agreed to release their information. Therefore, we will not address information relating to Texas Crude Energy in this ruling and assume you have released information related to this company. If you have not released such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302. We have reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note that the city has failed to comply with the requirements of section 552.301 of the Government Code. Section 552.301 provides in relevant part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). In this instance, you state that the request was received on October 16, 2003. You inform us that you came to an agreement with the requestor that the request would be treated as if received on October 20, 2003. However, the deadlines contained in section 552.301 are fixed by statute and cannot be altered by agreement. *See* Open Records Decision No. 541 at 3 (1990) (“[T]he obligations of a governmental body under the [predecessor to the Act] cannot be compromised simply by its decision to enter into a contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 514 (1988).”); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (governmental agency may not bring information within scope of predecessor to section 552.101 by promulgation of rule; to imply such authority merely from general rule-making powers would be to allow agency to circumvent very purpose of predecessor to the Act), *Bristol-Myers Squibb Co. v. Goldston*, 957 S.W.2d 671, 673 (Tex. App.—Fort Worth 1997, pet. denied) (“Because venue is fixed by law, any agreement or contract whereby the parties try to extend or restrict venue is void as against public policy.”). You did not submit a request for a ruling to this office until November 3, 2003. Thus, you failed to meet the deadline prescribed by section 552.301(b).

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<sup>2</sup> We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A demonstration that information is confidential or affects the interests of a third party may provide a compelling reason for overcoming the presumption of openness. *See* Open Records Decision No. 150 (1977). Therefore, we will consider whether any of the submitted information must be withheld to protect third party interests.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Exxon, Headington, and Pittencreiff have not submitted any comments to this office explaining how release of the requested information would affect their proprietary interests. Therefore, Exxon, Headington, and Pittencreiff have provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party 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 Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, none of the submitted information may be withheld under section 552.110.

However, the submitted documents contain information that is subject to section 552.136 of the Government Code. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

The city must withhold the account number information that we have marked pursuant to section 552.136 of the Government Code. All remaining information must be released.

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 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); *Texas 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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 194635

Enc. Submitted documents

c: Mr. Tim Clower  
Corpus Christi Sunrise, Ltd.  
P.O. Box 2525  
Corpus Christi, Texas 78401  
(w/o enclosures)

Ms. Kathy Remkes  
Texas Crude Energy, Inc.  
2803 Buffalo Speedway  
Houston, Texas 77098  
(w/o enclosures)

Manti Resources, Inc.  
c/o L.D. Barberito  
347 Graham Road  
Corpus Christi, Texas 78418  
(w/o enclosures)

Pittencreiff America, Inc.  
c/o C T Corporation System  
350 North St. Paul Street  
Dallas, Texas 75201  
(w/o enclosures)

Exxon Company, USA,  
ExxonMobil Pipeline Company, and  
Exxon Mobil Corporation  
c/o John Fully  
800 Bell Street, #2605  
Houston, Texas 77002-7497  
(w/o enclosures)

Headington Oil Company, L.P.  
c/o Pat L. Smith  
7557 Rambler Road, Suite 1100  
Dallas, Texas 75231  
(w/o enclosures)