



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2005

Ms. Stephanie Bergeron Perdue
Director Environmental Law Division
Texas Dept. on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

OR2005-11059

Dear Ms. Perdue:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 237709.

The Texas Commission on Environmental Quality (the "commission") received a request for the following information concerning Permit No. 18897 Hydrogen Plant issued to Western Refining Company, L.P. ("Western"): Plot Plan, Process Description, Process Flow Diagram, Emissions Data, and Appendix A - Emissions Calculations Worksheet. You state you have released some information. You further state that the commission notified Western of the request and of its opportunity to submit comments to this office objecting to disclosure of information subject to Western's proprietary interests. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). You state that the requested information may be confidential under sections 552.101 and 552.110, but make no arguments and take no position as to whether the information is so excepted. We have reviewed the submitted information.

Initially, we note, and you have acknowledged to us, that some of the submitted information is not responsive to the instant request. Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling. We will address the exceptions you have raised for the responsive information.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released to the public. *See Gov't Code*

§ 552.305(d)(2)(B). As of the date of this decision, Western has not submitted to this office any reasons explaining why the information at issue should be withheld. Furthermore, you have submitted a copy of correspondence in which Western notified the commission that Western does not object to disclosure of the responsive information.¹ Accordingly, as there has been no demonstration that any of the submitted information is confidential or proprietary for purposes of the Act, the commission may not withhold any of the submitted information on those grounds under section 552.101 or section 552.110 of the Government Code. *See* Gov't Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 652 (1997) (Health & Safety Code § 382.041 of the Health and Safety Code protects information only if *prima facie* case is established that information is trade secret under Restatement of Torts and if information was identified as confidential on submission to commission), 552 at 5 (1990) (if governmental body takes no position under Gov't Code § 552.110(a), third party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information under Gov't Code § 552.110(b), party must show by specific factual evidence, not conclusory or generalized allegations, that release of information would cause that party substantial competitive harm).

However, we note the submitted information includes e-mail addresses that are excepted under section 552.137 of the Government Code.² Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We have marked e-mail addresses in the submitted information that are not of a type specifically excluded by section 552.137(c). Therefore, the commission must withhold these marked e-mail addresses in accordance with section 552.137 unless the commission receives consent for their release.

In summary, the marked information that is not responsive need not be released. The marked e-mail addresses must be withheld unless the commission receives consent for their release. The remaining submitted 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

¹We note that Western, in its correspondence with the commission, informed the commission that Western would not submit any briefing to this office.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 237709

Enc. Submitted documents

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