



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 08, 2008

Ms. Mary Risner
Mr. Robert Martinez
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2008-00262

Dear Ms. Risner and Mr. Martinez:

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# 298881.

The Texas Commission on Environmental Quality (the "commission") received a request for information relating to chemical releases on five specified dates. You inform us that some of the requested information either has been or will be released. You take no position with respect to the public availability of the rest of the requested information. You believe, however, that the remaining information may implicate the interests of BP Products North America, Inc. ("BP"). You notified BP of this request for information and of its right to submit arguments to this office as to why the remaining information should not be released.¹ We have reviewed the information you submitted.²

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²To the extent that the submitted information is a representative sample of the requested information, this letter ruling assumes that the submitted information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the commission to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We first note that 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 of the Government Code 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). Although an attorney for BP notified this office that BP objects to the release of the submitted information, we have received no arguments in support of BP's objection to disclosure. *See id.* § 552.301(e)(1)(A) (providing that written comments must be submitted stating reasons why exceptions to disclosure apply). Thus, as BP has not demonstrated that any of the submitted information is confidential or proprietary for the purposes of the Act, the commission may not withhold any of the information under section 552.101 or section 552.110 of the Government Code. *See id.* §§ 552.101, .110(a)-(b); Open Records Decision Nos. 652 (1997) (Health & Safety Code § 382.041 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).

We also note that the submitted information includes a personal e-mail address. Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure.³ Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked an e-mail address that the commission must withhold under section 552.137 of the Government Code, unless the owner of the e-mail address has consented to its disclosure. The rest of the 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

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

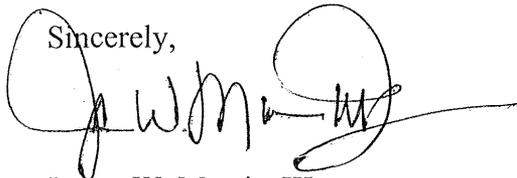
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/mcf

Ref: ID# 298881

Enc: Submitted documents

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