



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 20, 2008

Ms. Lesli R. Barber
Staff Attorney – Administrative Law Section
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2008-16014

Dear Ms. Barber:

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# 328317.

The Texas General Land Office (the “office”) received a request for a specific electric log drilled in the High Island 10 area. Although the office takes no position as to the disclosure of the submitted information, you state release of this information may implicate the privacy or proprietary interests of third parties. Accordingly, you state, and provide documentation showing, that the office notified Shell Offshore, Inc. (“Shell”); BHP Billiton Petroleum (Deepwater), Inc. (“BHP”); Total E&P USA, Inc. (“Total”); and Devon Energy Corporation (“Devon”), the interested third parties, of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov’t Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). A representative of each third party has submitted comments to our office. We have considered the submitted arguments and reviewed the submitted information.

Shell, the well operator, claims that the submitted information is excepted from disclosure under section 552.113(e) of the Government Code.¹ We note that section 552.113(a)(3) provides that information made confidential under section 552.113(e) is excepted from

¹BHP, Total, and Devon inform this office that they support the arguments submitted by Shell.

disclosure under the Act. *See* Gov't Code § 552.113(a)(3). Section 552.113(e) of the Government Code provides:

(e) Basic electric logs filed in the General Land Office on or after September 1, 1985, are either public information or confidential material to the same extent and for the same periods provided for the same logs by Chapter 91, Resources Code. A person may request that a basic electric log that has been filed in the General Land Office be made confidential by filing with the land office a copy of the written request for confidentiality made to the Railroad Commission of Texas [the "commission"] for the same log.

Id. § 552.113(e). Shell asserts that the submitted information constitutes electric logs and states that they were filed with the office after September 1, 1985. *See* Nat. Res. Code § 91.551(a)(2) (defining "electric log" for purposes of subchapter M, Chapter 91 of the Natural Resources Code). Section 91.553 of the Natural Resources Code states, in pertinent part:

(a) Except as specifically provided by this section, each electric log filed with the commission under this subchapter is not confidential and is public information under Chapter 552, Government Code.

(b) Not later than the date by which an electric log is required to be filed with the commission under Section 91.552, the operator may file a written request with the commission asking that the electric log remain confidential and not be made available as public information. On filing this request, the electric log or copy of the electric log required to be filed with the commission may be retained by the operator, and the electric log may remain in the possession of the operator for the period of confidentiality and any extensions of that period. On filing of the request for confidentiality, the electric log becomes confidential and remains confidential for a period of one year after the date the drilling operation was complete.

(c) If an electric log is made confidential under Subsection (b), the operator is entitled to have the period of confidentiality extended once for an additional period of two years. The commission shall grant the two-year extension on written request of the operator. The written request must be made to the commission before the one-year period of confidentiality under Subsection (b) expires.

(d) If an electric log is made confidential under Subsection (b) and the log was run in a well drilled on land submerged in state water, the operator is entitled to have the period of confidentiality extended for not more than two additional periods of two years each. The commission shall grant the extension or extensions on written request of the operator. The written

request must be made to the commission before the expiration of the one-year period of confidentiality under subsection (b) or the expiration of the first extension granted under this subsection.

Id. § 91.553(a)-(d). Shell informs us, and provides supporting documentation, that it has filed a written request with the commission requesting confidentiality for the electric logs at issue pursuant to section 91.553 of the Natural Resources Code. *See id.* §§ 91.552(a) (listing requirements for the mandatory filing of a basic electric log run after September 1, 1995), 91.553(b). Shell also states it has obtained an extension for confidentiality of the submitted electric logs under section 91.553(d) of the Natural Resources Code, and that this information will remain confidential “until a date no earlier than July 1, 2010.” *See id.* § 91.553(d). Accordingly, Shell has demonstrated that section 91.553(d) is applicable to the submitted electric logs. Finally, Shell advises us that it has filed a copy of the written request for confidentiality made to the commission with the office regarding the same log. *See Gov’t Code* § 552.113(e). Based on these representations and our review, we find that section 552.113(e) is applicable to the submitted information. Thus, the office must withhold the submitted information under section 552.113(a)(3) of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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 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). If the governmental body does not file suit over 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/ma

Ref: ID# 328317

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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