



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2009

Mr. Robert Martinez
Director
Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711

OR2009-14973

Dear 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# 359048 (TCEQ PIR No. 09.08.04.03).

The Texas Commission on Environmental Quality (the "commission") received a request for the following categories of information: (1) monitoring or sampling data of hydrogen fluoride at or near a specified Citgo Petroleum Corporation ("Citgo") refinery from July 19, 2009 through August 3, 2009; (2) documents produced by commission investigators from July 19, 2009 through August 3, 2009 pertaining to a fire incident at the same refinery; (3) documents reflecting the time commission personnel arrived at the same refinery on July 19, 2009; (4) the most recent Tier2 report for the specified refinery; and (5) commission investigations into firewater runoff. You inform this office you have released most of the requested information. Although you take no position as to the public availability of the submitted diagrams, you state their release may implicate the proprietary interests of Citgo. Thus, pursuant to section 552.305 of the Government Code, you notified Citgo of the request and of the corporation's right to submit arguments to this office as to why its information should not be released. 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 in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Citgo states it does not object to release of the submitted general plot plans. However, Citgo argues the diagrams identified as "process" or "process flow" diagrams are excepted under section 552.110(a) of the Government Code. This section protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts, which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . A trade secret is a process or device for continuous use in the operation of the business . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person's claim for exception as valid under section 552.110(a) if that person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law. *See Open Records Decision No. 552 at 5* (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim.² *Open Records Decision No. 402* (1983).

¹We 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.

²The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;

Upon review of Citgo's arguments and the submitted diagrams, we find Citgo has established the process diagrams and process flow diagrams are trade secrets and must be withheld under section 552.110(a). As Citgo raises no exceptions to disclosure of the remaining information, the remaining diagrams must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 359048

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

(3) the extent of measures taken by [the company] to guard the secrecy of the information;

(4) the value of the information to [the company] and [its] competitors;

(5) the amount of effort or money expended by [the company] in developing the information;

(6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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