



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2010

Mr. Robert Martinez
Environmental Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2010-13458

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# 392501 (TCEQ PIR No. 10.06.17.04).

The Texas Commission on Environmental Quality (the "commission") received a request for correspondence received or sent by a named commission employee relating to the licensing of a named radioactive waste disposal facility from September 1, 2007 to present, including correspondence with the Department of Energy or the Nuclear Regulatory Commission (the "NRC"), records of all incoming and outgoing telephone calls to and from the employee for the same time period, the employee's weekly calendar from January 2, 2008 to present, and the employee's personnel file.¹ You state the commission has released some of the requested information. You contend that other information is not subject to the Act. You claim that certain information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address your claim that the calendar entries you have marked are not subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹You inform us that the commission requested and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request is unclear or a large amount of information has been requested, governmental body may clarify request or discuss with requestor how request may be narrowed).

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You claim that the calendar entries you have marked are not subject to the Act. You state that these entries relate to personal appointments. Based on your representations and our review of the submitted information, we conclude that the calendar entries you have marked do not constitute public information for the purposes of section 552.002. *See* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, the calendar entries you have marked are not subject to the Act, and the commission need not release them in response to this request.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You contend that the information in Attachment C is excepted under section 552.101 in conjunction with section 2.390 of title 10 of the Code of Federal Regulations. A federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision Nos. 599 (1990), 373 (1983). Under section 2133 of title 42 of the United States Code, the NRC is authorized to issue licenses regarding the use, possession, transfer, and receipt of nuclear material and to promulgate rules or regulations related to the issuance of such licenses. *See* 42 U.S.C. § 2133(a).

You state that the commission has jurisdiction over radioactive processing and storage because "delegation of authority over radioactive waste processing and storage was granted to the State of Texas by the United States" through the NRC. You explain that the information in Attachment C relates to a major amendment of a radioactive material license. You also state that the information is required to be kept confidential under a federal regulation. Section 2.390 of title 10 of the Code of Federal Regulations provides NRC records regarding the issuance and renewal of a license may be kept secret by an executive order in the interest of national defense. 10 C.F.R. § 2.390(a)(1). You have provided this office with a copy of an order issued by the NRC, EA 05-090, pertaining to the confidentiality of a licensee's increased control program for radioactive materials of quantities of concern. You state that the order and section 2.390 of title 10 of the Code of Federal Regulations require confidentiality. You refer to Table 1 of the order, which defines radioactive material quantities of concern ("RAM QC"), and explain that the license at issue is authorized for RAM QC. You assert that "when the [commission] reviews the renewal

²As our ruling is dispositive, we need not address the exceptions you raise against disclosure of this information.

of the license, any documents generat[ed] by the [commission] which discuss these radionuclides and Increased Controls procedures are required to be withheld from disclosure to the public.” Based on your representations, we find the commission must withhold Attachment C under section 552.101 in conjunction with section 2.390 of title 10 of the Code of Federal Regulations and EA 05-090.³

In summary, the calendar entries you have marked are not subject to the Act, and the commission need not release them in response to this request. The commission must withhold Attachment C under section 552.101 in conjunction with section 2.390 of title 10 of the Code of Federal Regulations and EA 05-090. The remaining information 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 392501

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As we make this determination, we need not address the remaining arguments against disclosure of this information.