



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 24, 2011

Ms. Sarah Irwin Swanson  
Deputy Director of General Law  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711

OR2011-06468A

Dear Ms. Swanson:

This office issued Open Records Letter No. 2011-06468 (2011) on May 10, 2011. We have examined this ruling and determined that Open Records Letter No. 2011-06468 is incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2011-06468. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

The Public Utility Commission (the "commission") received a request for four categories of information related to the outages of February 2, 2011. You state the commission will provide most of the requested information to the requestor. Although you state the commission takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Kinder Morgan Texas Intrastate Pipeline Group ("Kinder Morgan"), Crosstex Energy ("Crosstex"), Luminant Energy Company LLC ("Luminant"), Atmos Energy ("Atmos"), and Enbridge. Accordingly, you state, and provide documentation showing, the commission notified these third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). You state Crosstex and Atmos do not object to release of their respective information, and therefore the commission is withdrawing the portion of its request that pertains to Crosstex and Atmos. We have received comments from Luminant. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us a portion of the submitted information is not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the commission need not release non-responsive information in response to this request.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Kinder Morgan or Enbridge explaining why those companies' submitted information should not be released. Therefore, we have no basis to conclude those companies have any protected proprietary interests in their submitted information. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the commission may not withhold any portion of the information pertaining to Kinder Morgan or Enbridge based upon the proprietary interests of those companies.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *id.* at 683. We note, however, the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Luminant claims common-law privacy for its employee's cellular telephone number. Upon review, however, we find the information at issue is not highly intimate or embarrassing and of no legitimate public interest. Therefore, we conclude the commission may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Luminant argues portions of its submitted information are excepted from disclosure under section 552.110(b) of the Government Code, which protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure

would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also Open Records Decision No. 661 at 5-6 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm). Luminant contends that release of the information it has indicated regarding the energy capabilities of the plant will cause it substantial competitive harm since that “knowledge would give the competitor insights into how Luminant might offer electricity from those units and enable the competitor to strategically offer its own supply to achieve an advantageous position that it would not have if it did not have insights regarding its competitor’s operations.” Upon review, we find Luminant has established the information at issue, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Accordingly, the commission must withhold the information we have marked under section 552.110(b) of the Government Code.<sup>1</sup> As no further exceptions to disclosure are raised, the remaining responsive 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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

---

<sup>1</sup>As our ruling is dispositive of this information, we need not address Luminant’s argument under section 552.104 of the Government Code.

Ref: ID# 424249

Enc. Submitted documents

c: Requestor  
(w/o enclosures)