



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2014

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

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2014-18195

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# 538910 (PIR No. 14-17473).

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to (1) communications relating to the Voluntary Emissions Reductions Agreements signed by two specified entities during a specified time period; and (2) communications regarding a specified chemical and relating to or corresponding with six specified entities, including records sent to or from individuals within the commission's toxicology division during a specified time period.<sup>1</sup> You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.137 of the Government Code. You further state release of the submitted information may implicate the proprietary interests of Dow Chemical Company ("Dow"); ExxonMobil ("Exxon"); Firestone Polymers, L.L.C. ("Firestone"); Goodyear Tire & Rubber Co. ("Goodyear"); and Texas Petrochemicals, L.P. ("TPC"). Accordingly, you state you notified the affected third parties of the request and of their right to submit arguments to this office explaining why their information should not be

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<sup>1</sup>We note the commission sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 applicability of exception in certain circumstances). We have received comments submitted by Dow, Exxon, Firestone, and TPC. We have considered the submitted comments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, 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, we have only received arguments from Dow, Exxon, and Firestone explaining why their information at issue should not be released. Although we received comments from TPC, TPC did not raise any exceptions to disclosure or assert it had a protected proprietary interest in the responsive information. Therefore, we have no basis to conclude Goodyear or TPC have protected proprietary interests in the 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. Accordingly, the commission may not withhold the submitted information on the basis of any proprietary interests Goodyear or TPC may have in the information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by section 382.041 of the Health and Safety Code, which provides in part that "a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted." Health & Safety Code § 382.041(a). This office has concluded section 382.041 protects information submitted to the commission if a *prima facie* case is established that the information constitutes a trade secret under the definition set forth in the Restatement of Torts and if the submitting party identified the information as being confidential in submitting it to the commission. *See* Open Records Decision No. 652 (1997). Dow, Exxon, and Firestone state the submitted information in Attachment E was designated as being confidential when it was

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<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

provided to the commission.<sup>3</sup> Thus, the information at issue is confidential under section 382.041 to the extent this information constitutes a trade secret. Because section 552.110(a) of the Government Code also protects trade secrets, we will address the claims by Dow, Exxon, and Firestone for the information at issue under section 552.110(a) of the Government Code.

Section 552.110 protects the proprietary interests of private parties with respect to two types of information: (1) “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and (2) “[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. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is 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. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* ORD 552 at 2. Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one’s business, and which gives [one] 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 single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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.

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<sup>3</sup>We note information is ordinarily not confidential under the Act simply because the party submitting the information anticipates or requests confidentiality for the information. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov’t Code § 552.110).

RESTATEMENT OF TORTS § 757 cmt. b (1939) (citation omitted); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret, as well as the Restatement's list of six trade secret factors.<sup>4</sup> *See* RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) 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.*; ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Dow, Exxon, and Firestone argue portions of their submitted information in Exhibit E constitute trade secrets under section 552.110(a). Based on the arguments submitted by Exxon and Firestone and our review of the information at issue, we conclude Exxon and Firestone have established the information we have marked constitutes trade secrets. Accordingly, the commission must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 382.041 of the Health & Safety Code and section 552.110(a) of the Government Code.<sup>5</sup>

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<sup>4</sup>There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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

<sup>5</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Exxon and Firestone also contend the release of some of the information at issue would result in substantial competitive harm to the companies. Having considered the arguments and reviewed the information at issue, we conclude Exxon and Firestone have demonstrated that a portion of the remaining information at issue consists of commercial or financial information, disclosure of which would cause the companies substantial competitive harm. Accordingly, the commission must generally withhold the information we have marked under section 552.110(b). However, as you acknowledge, under the federal Clean Air Act, emission data must be made available to the public, even if the data otherwise qualifies as trade secret information. *See* 42 U.S.C. 7414(c). We note that emission data is only subject to the release provision in section 7414(c) of title 42 of the United States Code if it was collected pursuant to subsection (a) of that section. *See id.* Thus, to the extent any of the information at issue constitutes emissions data for the purposes of section 7414(c) of title 42 of the United States Code, the commission must release such information in accordance with federal law. We find Dow, Exxon, and Firestone have failed to establish the remaining information at issue constitutes a trade secret under section 552.110(a) or made the specific factual or evidentiary showing required by section 552.110(b) that the release of the remaining information at issue would cause them substantial competitive harm. *See* ORD 319 (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). Accordingly, the commission may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

The commission claims the information in Attachments F and G is protected from release under section 552.107(1) of the Government Code. Section 552.107(1) protects information that comes within the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege

applies only to a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information in Attachments F and G consists of communications sent internally within the commission between staff attorneys and client program members. You state the information at issue was communicated for the purpose of facilitating the rendition of professional legal services to the commission, was intended for internal distribution only, and has remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to Attachment F. Thus, the commission may generally withhold Attachment F under section 552.107(1) of the Government Code. We note, however, one of these e-mail strings includes e-mails received from and sent to parties with whom you have not demonstrated the commission shares a privileged relationship. Furthermore, if the e-mails received from and sent to non-privileged parties are removed from the e-mail string and stand alone, they are responsive to the request for information. Therefore, if the non-privileged e-mails, which we have marked, are maintained by the commission separate and apart from the otherwise privileged e-mail strings in which they appear, then the commission may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code. In that event, we will address your arguments under section 552.111 of the Government Code for such information. Further, we find you have failed to demonstrate how Attachment G consists of privileged attorney-client communications made for the rendition of professional legal services. Accordingly, the commission may not withhold Attachment G under section 552.107.

The commission claims the information in Attachment G and the non-privileged information in Attachment F are protected from release under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the attorney work product privilege found in Texas Rule of Civil Procedure 192.5. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

- (1) [M]aterial prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including

the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that

a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

*Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7.

Upon review, we find you have failed to demonstrate how the information at issue was prepared in anticipation of litigation for the purposes of section 552.111. Consequently, the commission may not withhold the information at issue as attorney work product under section 552.111 of the Government Code.

Section 552.111 of the Government Code also encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of the deliberative process privilege under section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking

functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland*, 22 S.W.3d 351 (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See Open Records Decision No. 631 at 3 (1995).*

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see ORD 615 at 5.* But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See Open Records Decision No. 313 at 3 (1982).*

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See Open Records Decision Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants).* For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See ORD 561 at 9.*

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor).* Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You indicate the information at issue consists of advice, opinions, and recommendations made between commission employees regarding policymaking matters. You also indicate the information at issue contains draft documents that will be released in their final form. Based on your representations and our review, we find the information we have marked consists of advice, opinions, and recommendations pertaining to commission policymaking

matters. Accordingly, the commission may withhold the information we have marked in Attachment G under section 552.111 of the Government Code and the deliberative process privilege. However, we find the remaining information at issue consists of general administrative and purely factual information. Further, some of the information consists of communications with parties with whom you have not demonstrated the commission shares a privity of interest. Thus, we find you have failed to demonstrate how the remaining information is excepted under section 552.111 and the deliberative process privilege. Accordingly, the remaining information at issue may not be withheld under section 552.111 of the Government Code on that basis.

The commission claims some of the information in Attachment H is protected from release under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the commission must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the commission must generally withhold the information we have marked in Attachment E under section 552.101 of the Government Code in conjunction with section 382.041 of the Health & Safety Code and section 552.110(a) of the Government Code. The commission must also generally withhold the information we have marked in Attachment E under section 552.110(b). However, to the extent any of the marked information in Attachment E constitutes emissions data for the purposes of section 7414(c) of title 42 of the United States Code, the commission must release such information in accordance with federal law. The commission may generally withhold Attachment F under section 552.107(1) of the Government Code. However, if the non-privileged e-mails in Attachment F, which we have marked, are maintained by the commission separate and apart from the otherwise privileged e-mail string in which it appears, then the commission may not withhold these non-privileged e-mails under section 552.107(1). The commission may withhold the information we have marked in Attachment G under section 552.111 of the Government Code and the deliberative process privilege. The commission must withhold the personal e-mail addresses we have marked in Attachment H under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/bhf

Ref: ID# 538910

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ashland Rubber Plant  
1615 Main Street  
Port Neches, Texas 77651  
(w/o enclosures)

Dupont Performance Elastomers  
6350 Highway 347  
Beaumont, Texas 77705  
(w/o enclosures)

Firestone Polymers  
c/o Ms. Jennifer Keane  
Baker Botts  
Suite 1500  
98 San Jacinto Boulevard  
Austin, Texas 78701-4078  
(w/o enclosures)

Ms. Fran Quinlan Falcon  
Environmental Leveraged Delivery Leader  
Texas Operations  
The Dow Chemical Company  
2301 North Brazosport Boulevard  
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Mr. Jontae C. Reese  
Counsel  
ExxonMobil  
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Baytown, Texas 77522-4004  
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Mr. Tony Wisenbaker  
Plant Manager  
Texas Petrochemicals  
8600 Park Place Boulevard  
Houston, Texas 77017  
(w/o enclosures)

Filed in The District Court  
of Travis County, Texas

Sc. NOV 12 2015  
At 8:49 A.M.  
Velva L. Price, District Clerk

Cause No. D-1-GN-14-004446

THE GOODYEAR TIRE & RUBBER  
COMPANY,  
*Plaintiff,*

v.

GREG ABBOTT, ATTORNEY GENERAL  
OF TEXAS, and THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY,  
*Defendants.*

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IN THE DISTRICT COURT OF  
  
353rd JUDICIAL DISTRICT  
  
TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which The Goodyear Tire & Rubber Company (Goodyear), sought to withhold certain information which is in the possession of the Texas Commission on Environmental Quality (TCEQ) from public disclosure. All matters in controversy between Plaintiff, Goodyear, and Defendants, Ken Paxton<sup>1</sup>, Attorney General of Texas (Attorney General), and TCEQ arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Ms. Lisa Song, on October 21, 2015, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that TCEQ must withhold the designated portions of

<sup>1</sup> Because the Attorney General was sued in his official capacity, Ken Paxton is now the correct defendant.



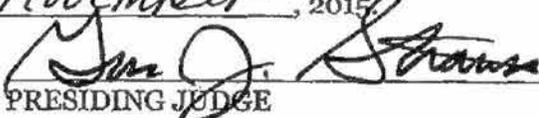
the information at issue. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this motion.

The requestor has not filed a motion to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Goodyear, the Attorney General, and TCEQ have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue are excepted from disclosure pursuant to Texas Government Code section 552.110. Pursuant to Texas Government Code section 552.110, TCEQ must redact the product formulae, production rate information, and financial information in accordance with the markings provided to TCEQ by the Attorney General;
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Goodyear, the Attorney General, and TCEQ and is a final judgment.

SIGNED the 12<sup>th</sup> day of November, 2015  
  
PRESIDING JUDGE

Agreed Final Judgment  
Cause No. D-1-GN-14-004446

AGREED:

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KIMBERLY FUCHS

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Chief, Open Records Litigation  
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Austin, Texas 78711-2548  
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**ATTORNEY FOR DEFENDANT, KEN PAXTON**

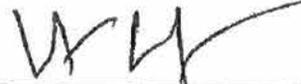
  

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**ATTORNEY FOR PLAINTIFF, THE GOODYEAR TIRE & RUBBER COMPANY**

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**ATTORNEY FOR DEFENDANT, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

Agreed Final Judgment  
Cause No. D-1-GN-14-004446