



January 28, 2015

Mr. Kyle O. Jones  
Assistant District Attorney  
Brazoria County  
111 East Locust, Suite 408A  
Angleton, Texas 77515

OR2015-01610

Dear Mr. Jones:

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# 551593.

The Brazoria County Environmental Health Department (the "county") received a request for any information regarding illegal waste discharges, storage tanks, environmental contamination, and violations of environmental laws and/or permits for properties at, and adjacent to, a specified address.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of this information may implicate the proprietary interests of Buchanan Soil Mechanics Inc. ("Buchanan"). Accordingly, you state, and provide documentation showing, you notified Buchanan of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d)*;

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<sup>1</sup>We note the county 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).

*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). We have considered the exception you claim and reviewed the submitted information.

Although the county argues the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the county's argument under section 552.110.

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 not received comments from Buchanan explaining why its information should not be released. Therefore, we have no basis to conclude Buchanan has a protected proprietary interest 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 county may not withhold any of the information at issue on the basis of any proprietary interest Buchanan may have in it.

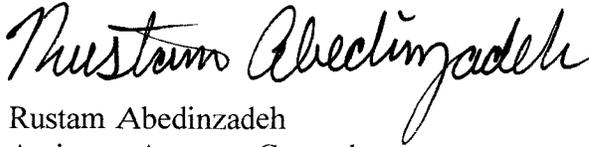
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. The submitted information must be released; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Rustam Abedinzadeh  
Assistant Attorney General  
Open Records Division

RA/dls

Ref: ID# 551593

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Philip Buchanan  
Buchanan Soil Mechanics Inc.  
14 Harbor Lane, Apartment N  
Kemah, Texas 77565-2648  
(w/o enclosures)