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ATTORNEY GENERAL OF TEXAS

March 24, 2015

Mr. R. Brooks Moore
Managing Counsel, Governance
The Texas A&M University System
301 Tarrow Street, Sixth Floor
College Station, Texas 77840-7896

OR2015-05590

Dear Mr. Moore:

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# 557315 (Ref. No. AR 14-021).

The Office of the Texas State Chemist (the "OTSC") received a request for information pertaining to East Texas AG Supply, Inc. ("AG Supply") during a specified time period. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified AG Supply 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); *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 representative sample of information.¹

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from AG Supply. Thus, we have no basis to conclude AG Supply has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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

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.

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 OTSC may not withhold any of the submitted information on the basis of any proprietary interest AG Supply 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 other statutes. You raise section 552.101 in conjunction with section 63.005(d) of the Agriculture Code for portions of the submitted information. Section 63.005 of the Agriculture Code provides the following:

(a) At least annually, the [Texas Feed and Fertilizer Control Service (the “service”)] shall publish:

(1) information concerning the sales of commercial fertilizers, together with data on those sales that the service considers advisable;

(2) the results of the analyses of official samples of commercial fertilizers sold within the state as compared to the guaranteed analyses of those fertilizers;

(3) a financial statement showing the receipt and expenditure of funds under this chapter; and

(4) other information relating to fertilizer as the service considers necessary or desirable to the public interest.

(b) The service shall prescribe the form of a publication required under this section.

(c) The report on sales of commercial fertilizers shall separately show information concerning the sales for the fall and spring seasons.

(d) A publication under this section may not disclose the scope of operations of any person.

Agric. Code § 63.005. You assert the information you have marked in the submitted quarterly tonnage reports in Exhibit B-1, which were filed pursuant to section 63.072 of the Agriculture Code, is confidential under section 63.005(d) of the Agriculture Code. *See id.* § 63.072 (providing the person responsible for paying fertilizer inspection fee shall file with service sworn report stating tonnage of all commercial fertilizer that the person manufactured or distributed in state preceding reporting period). However, we find section 63.005(d) does not make information confidential for purposes of the Act; instead, it only provides that the

service may not disclose in its annual publication the scope of operations of any person concerning the sales of commercial fertilizer. *See id.* § 63.005(a), (c), (d); Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, none of the information at issue is confidential under section 63.005, and the OTSC may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 63.005. As no further exceptions against disclosure have been raised, the OTSC must release the submitted information.

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, 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 577315

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)