



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2015

Ms. Kathleen Decker
Litigation Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2015-22145

Dear Ms. Decker:

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# 583993 (TCEQ PIR 15-23159 and 15-23169).

The Texas Commission on Environmental Quality (the "commission") received a request for environmental information pertaining to seven specified addresses. You state the commission will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Gulf Bayport Chemicals LP ("Gulf") and Velsicol Chemical, LLC ("Velsicol"). Accordingly, you state, and provide documentation demonstrating, you notified Gulf and Velsicol of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 considered the claimed exceptions and reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code

§ 552.305(d)(2)(B). As of the date of this letter, Gulf and Velsicol have not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes proprietary information of Gulf or Velsicol, and the commission may not withhold any portion of the submitted information on that basis. *See* 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, 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.

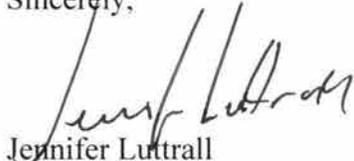
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses section 382.041 of the Health and Safety Code, which provides, in part, “a member, 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 that is submitted to the commission if a *prima facie* case is established 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 when submitting it to the commission. *See* Open Records Decision No. 652 (1997). The commission states Gulf and Velsicol marked portions of the submitted information as confidential when Gulf and Velsicol provided the submitted information to the commission. Thus, the submitted information is confidential under section 382.041 to the extent it constitutes a trade secret. However, as noted above, Gulf and Velsicol have not submitted arguments to this office explaining how any of the submitted information constitutes a trade secret. *See* Gov’t Code § 552.305(d)(2)(B). Therefore, we have no basis to conclude any of this information constitutes a trade secret. *See id.* § 552.110; ORDs 552 at 5, 542 at 3. Consequently, the commission may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 382.041 of the Health and Safety Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the commission must withhold the information submitted as Tab 2 under section 552.130 of the Government Code. 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 583993

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Nowlan
Gulf Bayport Chemicals LP
9700 Bayport Boulevard
Pasadena, Texas 77507
(w/o enclosures)

Velsicol Chemical
10400 West Higgins Road
Rosemont, Illinois 60018
(w/o enclosures)