



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2015

Ms. Barbara L. Klein  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2015-24039

Dear Ms. Klein:

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# 587212 (DSHS OR File: 24655/2015).

The Texas Department of State Health Services (the "department") received a request for (1) all records of inspections, violations, and follow-up reports of the Blue Bell Creameries, L.P. ("Blue Bell") facility over a specified time period; and (2) all written communications between Blue Bell and its employees, and the department over a specified time period. You state you will release some information to the requestor. Although the department takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the information may implicate the proprietary interests of Blue Bell. Accordingly, you state you notified Blue Bell of the request for information and of the company's 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 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) of the Government Code 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 Blue Bell explaining why the submitted information should not be released. Therefore, we have no basis to conclude Blue Bell 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

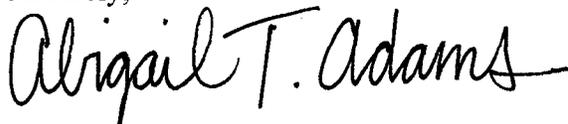
by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest Blue Bell may have in the information.

Section 552.137 of the Government Code 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).<sup>1</sup> See Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail address at issue does not appear to be of a type specifically excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department must release the remaining 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](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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 587212

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Blue Bell Creameries  
1101 South Blue Bell Road  
Brenham, Texas 77833  
(w/o enclosures)