



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2015

Mr. Nick Lealos
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2015-24077

Dear Mr. Lealos:

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# 587420 (PIR Nos. 15-4551, 15-4741, and 15-5051).

The Texas Department of Public Safety (the "department") received three requests from the same requestor for information pertaining to the shipment of oil by train. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of BNSF Railway ("BNSF").¹ Accordingly, you state you notified BNSF of the request for information and of its right to submit arguments to this office as to why the information at issue 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 reviewed the submitted information.

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) 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

¹You previously informed us, and provided documentation showing, the Department of Transportation ("DOT"), after consultation with the Department of Homeland Security and the Transportation Security Administration ("TSA"), has determined the requested information does not contain sensitive security information as defined by either DOT or TSA regulations. *See* 79 Fed. Reg. 59892 (2014); Open Records Letter No. 2014-15674 (2014).

received comments from BNSF explaining why the submitted information should not be released. Therefore, we have no basis to conclude BNSF 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 BNSF may have in the information. As no exceptions to disclosure have been raised, the department 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 587420

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Patrick Brady
BNSF Railway Company
4200 Dean Road
Fort Worth, Texas 76106
(w/o enclosures)