



Office of the Attorney General
State of Texas

June 24, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Terry G. Salem
Staff Attorney
Legal Division
Texas Air Control Board
12124 Park 35 Circle
Austin, Texas 78753

OR93-353

Dear Mr. Salem:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19520.

The Texas Air Control Board (the "board") has received a request for information in its possession relating to PPG Industries, Inc. ("PPG"). Specifically, the requestor seeks six categories of information relating to PPG's chemical facility in Laport, Texas, including:

1. Any and all permits (including those set forth above), registrations, licenses and approvals issued to PPG Industries Inc. by the Air Control Board and any other state or local authorities pursuant to the Clean Air Act, Natural Resources Code and Health and Safety Code;
2. Any and all reports, applications, emissions inventory summaries, submissions and any other documents or information submitted by PPG Industries Inc. to the Air Control Board and any other state or local authorities in connection with or comprising any of the foregoing permits, including, without limitation, all annual reports, monitoring reports, submissions under the Emergency Planning and Community Right to Know Act, and any and all other reports and submissions required by any federal, state or local environmental law, order or permit;
3. Any and all orders on consent, enforcement proceedings, fines, investigations, violations, and any and all other matters between the Air Control Board and PPG Industries Inc., whether any such matter is completed or pending;

4. Whether there is any on-going inquiry or investigation of any environmental or health nature with regard to PPG Industries, Inc., or whether any such investigation has been undertaken in the past, together with the results of any such investigation;

5. Whether you are aware of any problems or violations of an environmental or health nature associated with PPG Industries Inc.; and

6. Whether PPG Industries Inc. is in compliance with each and every permit issued by the Air Control Board and whether any such permit has been revoked, suspended, cancelled or violated.

You have submitted the requested information to us for review and ask whether the board is required to release it under the Open Records Act.

Pursuant to section 7(c) of the act, we have notified PPG and have solicited arguments supporting the assertion that the requested information is excepted from required public disclosure under the Open Records Act. In response, we have received a letter from PPG in which it claims that some of the documents submitted to us for review are excepted from required public disclosure by section 3(a)(4) and by section 3(a)(1) in conjunction with section 381.022 of the Health and Safety Code. Because neither you nor PPG claim that the remainder of the requested information is excepted from required public disclosure under section 3(a) of the Open Records Act, we presume that it has been or will be made available to the requestor. *See* Open Records Decision Nos. 409 (1984); 363 (1983).

We turn first to section 3(a)(4). Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect *governmental* interests in commercial transactions. Open Records Decision No. 541 (1990). Neither the board nor the respondent indicates how the requested information relates to a competitive bidding situation or commercial transaction to which the department is party. Accordingly, section 3(a)(4) is inapplicable here.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." PPG claims that some of the requested information is made confidential by section 381.022 of the Health and Safety Code, which provides:

A member, employee, or agent of the board may not disclose information submitted to the board relating to secret processes or

methods of manufacture or production that is identified as confidential when submitted.

In Attorney General Opinion H-836 (1976) (copy enclosed), this office construed this provision's nearly identical predecessor, section 1.07, V.T.C.S. article 4477-5. In that opinion, this office determined that if the board receives a request for information which it considers to be excepted under section 1.07, it should request a decision from the attorney general pursuant to section 7(a) of the Open Records Act. This office also determined, however, that it is the board's duty to make the initial determination as to whether any of the requested information falls within section 1.07. *Id.* The board is silent as to whether the information at issue here falls within section 381.022. Accordingly, we are returning the submitted information to you so that the board may determine whether the requested information falls within section 381.022. If the board determines that it falls within the protection of section 381.022, then the board must return it to us pursuant to section 7(a) of the Open Records Act. If the board determines that the requested information does not fall within section 381.022, then it must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee

JET/GCK/lmm

Enclosures: submitted documents
Attorney General Opinion H-836

Ref.: ID# 19520
ID# 19938
ID# 20007
ID# 20152

cc: Mr. Bruce W. Hoover
Sullivan, Benatovich, Oliverio
& Trimboli
600 Main Place Tower
Buffalo, New York 14202-3706