



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 12, 1994

Mr. Kevin R. Jung
Staff Attorney
Legal Services Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-171

Dear Mr. Jung:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 23345.

The Texas Natural Resource Conservation Commission (the "commission") has received a request for all records regarding an air quality permit application filed with the commission by Greenwall Insulation Company. You seek to withhold some of the requested information from required public disclosure.²

The information at issue here is governed by section 382.041 of the Health and Safety Code, which provides, in pertinent part:

(a) Except as provided by Subsection (b), 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.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²As you do not comment on the remainder of the requested information, we presume that it has or will be made available to the requestor. See Open Records Decision No. 363 (1983).

Health & Safety Code § 382.041.³ In Attorney General Opinion H-836 (1976), this office construed this provision's nearly identical predecessor, section 1.07 of article 4477-5, V.T.C.S. In that opinion, this office concluded that if the Air Control Board (now the commission's Office of Air Quality) receives a request for information, it should determine in the first instance whether the information is excepted under section 382.041, and then request a decision from the attorney general pursuant to section 552.301 (former section 7(a), article 6252-17a, V.T.C.S.) of the act. *Id.* at 2.

You suggest that the enactment in 1989 of former section 7(c) V.T.C.S. article 6252-17a, now section 552.305 of the Government Code, frees the board from its duty to determine initially whether requested information falls within section 382.041 of the Health and Safety Code. However, section 382.041 of the Health and Safety Code is not a provision of the Open Records Act, and the definitions and procedures of the Open Records Act should not be read into it. *See generally* Open Records Decision No. 391 (1983). Section 382.041 has its own procedure for addressing trade secret claims, described as follows by Attorney General Opinion H-836:

Section 1.07 [now Health and Safety Code section 382.041] establishes a two-pronged test for determining whether information submitted to the Board is disclosable to the public. In order to be deemed confidential, such information must: (1) relate to secret processes or methods of manufacture or production; and (2) be identified as confidential at the time of submission.

Attorney General Opinion H-836 (1976) at 2. This office concluded that the board was required to determine whether "confidentially-labeled information relates to secret processes or methods of manufacture." *Id.* at 4. This procedure was not changed by the addition of former section 7(c) to the Open Records Act. Accordingly, it remains the board's duty to determine whether requested information falls within section 382.041. *Id.*

You do not indicate whether the information at issue here falls within section 382.041. Accordingly, we are returning the submitted information to you so that the board may determine whether the information is within that provision. If the board determines that it is confidential within section 382.041, then the board should return it to us, with its statement that the information meets both parts of the two-pronged test.

³Subsection (b), which provides for release of information to the United States Environmental Protection Agency, is inapplicable in this instance.

Because 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,



Rebecca L. Payne
Section Chief
Open Government Section

RLP/GCK/rho

Ref: ID# 23345
ID# 23576
ID# 23365
ID# 23408
ID# 24137
ID# 24152
ID# 24235
ID# 24288
ID# 24331
ID# 24824
ID# 24899

Enclosures: Submitted documents

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