



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 5, 1996

Mr. Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR96-2299

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101542.

The Texas Natural Resource Conservation Commission (the "commission") received an open records request for information concerning Procter and Gamble. You have submitted the requested information for our review and ask whether it is confidential under section 552.101 of the Government Code in conjunction with section 382.041 of the Health and Safety Code and section 552.110 of the Government Code.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 382.041(a) of the Health and Safety Code provides:

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.<sup>1</sup>

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<sup>1</sup>Subsection (b) addresses requests made by representatives of the Environmental Protection Agency and, therefore, is inapplicable to this request.

(footnote added). Information may be withheld under section 552.101 in conjunction with section 382.041(a) of the Health & Safety Code if the commission or the submitting party establishes that the requested information "relat[es] to secret processes or methods of manufacture or production" and that it is identified as confidential by the submitting party when it is submitted to the commission. To determine whether information relates to secret processes or methods of manufacture or production under section 382.041(a), the commission or the submitting party must use the criteria used to determine whether particular information is classified as trade secret or commercial or financial information under section 552.110 of the Government Code. *See* Attorney General Opinion H-836 at 2 (1976).

Pursuant to section 552.305, we notified Procter and Gamble of the open records request. *See* Gov't Code § 552.305; Open Records Decision No. 542 (1990). Although Procter and Gamble identified the requested information as confidential when it submitted the information to the commission, Procter and Gamble did not respond to our notification. Moreover, the commission has not explained how the requested information falls under section 382.041. We conclude, therefore, that this information may not be withheld under section 552.101 in conjunction with section 382.041 of the Health and Safety Code.

The commission also asks whether the information is excepted from required public disclosure under section 552.110. Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. When a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5. Because Procter and Gamble did not respond to our notification, we conclude that Procter and Gamble has failed to establish a prima facie case that this information is a trade secret.

With respect to the second prong of section 552.110, information may be withheld under that provision if disclosure of the information is likely (1) to impair a governmental body's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. Open Records Decision No. 639 (1996) at 4. The party seeking to prevent disclosure must show by specific factual or evidentiary material that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.* In the case at hand, because Procter and Gamble did not respond to our notification and the commission does not contend that release of the information will impair its ability to obtain similar information in the future, the information may not be withheld under the second prong of section 552.110 of the Government Code. The commission must therefore release this information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 101542

Enclosures: Submitted documents

cc: Mr. Douglas Watson  
2605 Larchmont Street  
Mesquite, Texas 75150  
(w/o enclosures)