ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

Ms. Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

OR2005-10024

Dear Ms. Perdue:

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# 235752.

The Texas Commission on Environmental Quality ("TCEQ") received two requests for, respectively, "all written data and correspondence between Oryxe and TCEQ in regard to the complaints and allegations they made about Biofriendly Corporation and/or our product Green Plus" and "any documents TCEQ received from ORYXE Energy International, Inc. and anyone else that commented about Biofriendly and/or its product." You state that TCEQ has provided the requestors with some of the requested information. Although you make no arguments and take no position as to whether the requested information is excepted from disclosure, pursuant to section 552.305 of the Government Code, you notified Oryxe Energy International, Inc. ("Oryxe") of the request and of its opportunity to submit comments to this office. *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 that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered your arguments and reviewed the submitted information.[1]

[1]We note that TCEQ marked some of the submitted information as non-responsive to the request for information. This decision does not address the public availability of the non-responsive information, and it need not be released.

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) 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, Oryxe has not submitted to this office any reasons explaining why the submitted information should not be released. We thus have no basis for concluding that any of the responsive information constitutes proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information under Gov't Code § 552.110(b), party must show by specific factual evidence, not conclusory or generalized allegations, that release of information would cause that party substantial competitive harm), 652 (1997) (Health & Safety Code § 382.041 of the Health and Safety Code protects information only if *prima facie* case is established that information is trade secret under Restatement of Torts and if information was identified as confidential on submission to commission), 552 at 5 (1990) (if governmental body takes no position under Gov't Code § 552.110(a), third party must establish *prima facie* case that information is trade secret). Therefore, the responsive information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

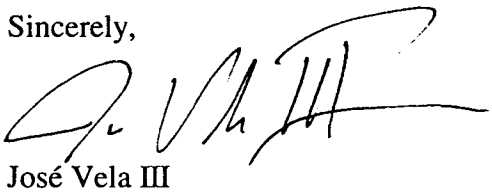
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 235752

Enc. Submitted documents

c: Robert W. Carroll
CEO and Chairman
Biofriendly Corporation
622 Terrado Dr.
Monrovia, California 91016
(w/o enclosures)

Mr. Walter L. Schindler
Chairman and CEO
Oryxe Energy International, Inc.
6 Thomas Ave.
Irvine, California 92618
(w/o enclosures)

Michael T. Stoller
Law Offices of Michael T. Stoller, APC
5747 Hoback Glen Road
Hidden Hills, California 91302
(w/o enclosures)