



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2006

Mr. Robert Martinez
Texas Commission in Environmental Quality
Environmental Law Division
P. O. Box 13087
Austin, Texas 78711-3087

OR2006-01301

Dear Mr. Martinez:

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# 241989.

The Texas Commission on Environmental Quality (the "TCEQ") received a request for all correspondence with U.S. Oil Recovery L.P. ("U.S. Oil Recovery") relating to their permit application and their dewatering operation. You state that you have released a portion of the requested information to the requestor. You claim that the responsive information may be excepted from disclosure pursuant to sections 552.101 and 552.110 of the Government Code, but make no arguments and take no position as to whether the information is so excepted. Instead, pursuant to section 552.305 of the Government Code, you have notified U.S. Oil Recovery, an interested third party, of this request for information, of the fact that the request for information may implicate its proprietary interests, and of its right to submit arguments to this office explaining why the requested information should not be released. *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 in Act in certain circumstances). We have reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note that 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, U.S. Oil Recovery has not submitted any comments to this office explaining how release of the requested information would affect its proprietary interests. Thus, U.S. Oil Recovery has not demonstrated that any of the submitted information is confidential or proprietary for purposes of chapter 552 of the Government Code. *See* Gov't Code §§ 552.101, .110; Open Records Decision Nos. 661 at 5-6 (1999), 552 at 5 (1990). Accordingly, TCEQ may not withhold any portion of the submitted information on the basis of any proprietary interest that U.S. Oil may have in the information. As no other exceptions are claimed, TCEQ must release the submitted information in its entirety to the requestor.

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,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 241989

Enc. Submitted documents

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