



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2007

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

OR2007-02564

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# 272938.

The Texas Commission on Environmental Quality (the "commission") received a request for materials and information relating to Rhodia, Inc.'s ("Rhodia") Houston facility. Although you take no position with respect to the requested information, you state that the request may implicate the proprietary interests of a third party, namely, Rhodia. Pursuant to section 552.305(d) of the Government Code, you have notified Rhodia 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 reviewed the submitted information.

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 decision, this office has received no correspondence from Rhodia. Thus, as there has been no demonstration that any of the submitted information that relates to Rhodia is confidential or proprietary for the purposes

of the Act, the commission may not withhold any of that information under section 552.101 or section 552.110 of the Government Code. See Gov't Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 652 (1997) (section 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), 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). Accordingly, because we have received no arguments, the submitted 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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/krl

Ref: ID# 272938

Enc. Submitted documents

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