

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2007

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

OR2007-07947

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# 282783.

The Texas Commission on Environmental Quality (the "commission") received two requests for specified reports pertaining to British Petroleum ("BP") in Texas City. You state that some of the requested information has been made available to the requestor. You indicate that the submitted information may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code, but make no arguments regarding these exceptions. You also state, and provide documentation showing, that you notified BP of the commission's receipt of the request for information and of BP's right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, BP has not submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of that company, and the commission may not withhold any portion of the

submitted information on that basis.<sup>1</sup> *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that the submitted information contains e-mail addresses. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the commission must withhold the e-mail addresses we have marked under section 552.137.

Finally, we note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

To conclude, the commission must withhold the e-mail addresses marked under section 552.137 of the Government Code. The commission must release the remaining information, but any copyrighted information may only be released in accordance with copyright law.

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

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<sup>1</sup>We note that, under the Federal Clean Air Act, emission data must be made available to the public, even if the data otherwise qualifies as trade secret information. *See* 42 U.S.C. § 7414(c).

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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jb

Ref: ID# 282783

Enc. Submitted documents

c: Mr. Steven Ibarra  
Moreno, Becerra & Casillas, P.C.  
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Montebello, California 90640  
(w/o enclosures)

Ms. Iris Cross  
BP  
P.O. Box 401  
Texas City, Texas 77590  
(w/o enclosures)

APR 14 2008

At 2:02 PM  
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-07-001996

BP PRODUCTS NORTH AMERICA INC.,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS ATTORNEY GENERAL GREG	§	
ABBOTT,	§	
Defendant.	§	201 <sup>ST</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff BP Products North America Inc. (BP) and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestors, Steven Ibarra and Lee Read, were sent reasonable notice of this setting and of the parties' agreement that the Texas Commission on Environmental Quality (TCEQ) must withhold the information at issue; that the requestors were also informed of their right to intervene in the suit to contest the withholding of this information; and that neither of the requestors has informed the parties of an intention to intervene. Neither has a requestor filed a motion to intervene or appeared today.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. Some of the information at issue, specifically the documents marked BPTC0010-030, 032, 034-035, 075-095, 097-100, 112, 114-134, 136, 138-140, 178-197, 202-224, 228, 230-313, 318-

322, 324-336, 338-341, 343-346, 348-350, 352-354, 356-363, 367, 370-376, 380-385, 390-393, 395-397, 403, 404, 406, 407, 411-428, 430-439, 441-443, 445-447, 449-451, 453-455, 457-459, 461-463, 465-467, 469-472, 474-477, 479-482, 486-497, 500-503, and 506-516, is excepted from disclosure by Tex. Gov't Code § 552.110, and TCEQ must withhold this information from the requestor.

2. Some of the information at issue, specifically the documents marked BPTC144-157 and 160-173, contains emissions data that must be disclosed pursuant to 40 C.F.R. § 2.301(a)(2) and (f); however, circulation rate information, drift loss factor information, and pounds of particulate matter (PM) per gallon of water contained in BPTC144-157 and 160-173 are excepted from disclosure by Tex. Gov't Code § 552.110.

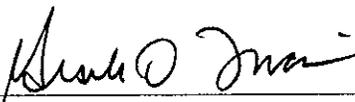
3. BP no longer contests the disclosure of the remaining information at issue, specifically the documents marked BPTC00 1-009, 031, 033, 036-074, 096, 101-111, 113, 135, 137, 141-143, 158, 159, 174-177, 198-201, 225-227, 229, 314-317, 323, 337, 342, 347, 351, 355, 364-366, 368, 369, 377-379, 386-389, 394, 398-402, 405, 408-410, 429, 440, 444, 448, 452, 456, 460, 464, 468, 473, 478, 483-485, 498-499, 504-505, and the unredacted text in BPTC 144-157 and 160-173.

4. TCEQ must release to the requestors all information described in Paragraphs 2 and 3 of this Judgment, except for circulation rate information, drift loss factor information, and pounds of PM per gallon of water.

5. All costs of court are taxed against the parties incurring the same;
6. All relief not expressly granted is denied; and

7. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 14 day of April, 2008.

  
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PRESIDING JUDGE

APPROVED:

  
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