



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2007

Ms. Valecia R. Tizeno
Assistant City Attorney
City of Port Author
P.O. Box 1089
Port Author, Texas 77641-1089

OR2007-09129

Dear Ms. Tizeno:

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# 284266.

The City of Port Arthur (the "city") received a request for "copies of the letters from industry in response to [the city's] letter about local hiring practices." Although the city raises no arguments against disclosure of the submitted information, the city believes this information may involve the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the city notified the interested third parties, Huntsman, Great Lakes Carbon, L.L.C.; Motiva/Shell Oil Company; Chevron Phillips Company, L.P.; Veolia Environmental Services; Air Products and Chemicals, Inc.; Port Arthur Steam Energy, L.P.; Valero Port Arthur (The Premcor Refining Group, Inc.); Chevron U.S.A., Inc.; and Total Petrochemicals, of the request for information and of their right to submit arguments explaining why the 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); *see also* 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 certain circumstances). We have reviewed the submitted information.

Initially, you state that you have received notice from Port Arthur Steam Energy, L.P. that they deem some of the submitted information confidential. However, information is not made confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied 430 U.S. 931 (1977); *see also* Open Records Decision Nos. 479 (1987) (information is not confidential under Public Information Act simply because party submitting it anticipates or requests that it be kept confidential), 203 (1978) (mere expectation of confidentiality by individual supplying information does not properly invoke section 552.110). The party is required to explain how the information is confidential by law or how an exception in the Act applies.

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 ruling, we have not received arguments for withholding the submitted information from any of the interested third parties. Therefore, we have no basis to conclude that the release of any of the submitted information would harm the proprietary interests of these companies. *See id.* § 551.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, we conclude that the city may not withhold any portion of the submitted information on the basis of any proprietary interest that the third parties may have in it.

We note that the submitted information contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See* Gov't Code § 552.137 (b). You do not inform us that the owners of the e-mail addresses have affirmatively consented to release. Therefore, the city must withhold the e-mail addresses that we have marked under section 552.137. The remaining 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).

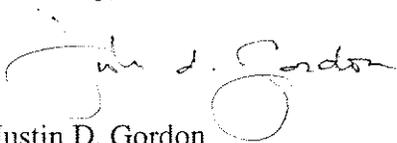
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 284266

Enc. Submitted documents

c: Ms. Christine Rappely
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(w/o enclosures)

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Mr. Dennis Black
Great Lakes Carbon LLC
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Mr. Richard Strause
Motiva/Shell Oil Company
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Mr. Richard Cuneo
Chevron Phillips Company L.P.
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