



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2008

Ms. Lesli R. Barber
Staff Attorney
Texas General Land Office
P.O. Box 12873
Austin, Texas 78701

OR2008-03009

Dear Ms. Barber:

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# 304256.

The Texas General Land Office (the "GLO") received a request for "the production history as to tonnage mined and produced by PDSCO from [a specified property], as the same relates to bentonite." Although you take no position with respect to the requested information, you claim that the information may contain proprietary information subject to exception under the Act. Accordingly, you state that you notified PDSCO, Inc. ("PDSCO") of the GLO's receipt of the request for information and of the company'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). PDSCO has responded to the notice and argues that the information at issue is excepted from disclosure under sections 552.104, 552.110, and 552.113 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

PDSCO argues that the submitted information is excepted from disclosure under section 552.113 of the Government Code. Section 552.113 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded that section 552.113(a)(2) protects from public disclosure only commercially valuable geological and geophysical information regarding the exploration or development of natural resources. Open Records Decision No. 627 at 3-4 (1994) (overruling rationale of Open Records Decision No. 504 (1988)); *see also* Open Records Decision No. 669 (2000). In that decision, this office explained that the phrase "information regarding the exploration or development of natural resources" means "information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation." *Id.* at 4 n.4. PDSCO explains that the information at issue is commercially valuable. As such, upon review, we find that PDSCO has demonstrated that the information at issue is commercially valuable geological or geophysical information regarding the exploration or development of natural resources. Accordingly, we conclude that the GLO must withhold the submitted information pursuant to section 552.113 of the Government Code. As our ruling is dispositive, we do not address PDSCO's remaining arguments against disclosure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 304256

Enc. Submitted documents

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