



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 29, 2009

Mr. Mark Sokolow  
City Attorney  
City of Port Arthur  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

OR2009-10480

Dear Mr. Sokolow:

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# 350421.

The City of Port Arthur (the "city") received a request for reports issued by or on behalf of Motiva Enterprises, L.L.C. ("Motiva"), Valero Energy Corporation ("Valero"), or TOTAL Petrochemicals ("Total") in support of their compliance with tax abatement agreements or industrial "in lieu of" agreements. You state the city has released some of the requested information pursuant to Open Records Letter Ruling No. 2007-09129 (2007).<sup>1</sup> Although you raise no arguments on behalf of the city, you state that the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state you have notified Motiva, Valero, and Total of the request for information and of each company's right to submit comments to this office as to why the submitted information should not be released. *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) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld

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<sup>1</sup>*See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

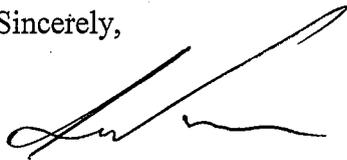
from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Motiva, Valero, and Total have not submitted any comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Thus, we have no basis for concluding that any portion of the submitted information pertaining to these third parties constitutes proprietary information, and the city may not withhold any portion of the submitted information on that basis. *See id.* § 552.110; 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).

We note that some of the submitted information appears to 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. 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). As no exceptions to disclosure have been raised, the submitted information must be released, but any information subject to copyright may only be released in accordance with federal copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/dls

Ref: ID# 350421

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Ms. Verna Rutherford  
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