



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2010

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

OR2010-13429

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# 392730 (PIR No. 10.06.17.09).

The Texas Commission on Environmental Quality (the "commission") received a request for (1) commission staff review or reviews of Waste Control Specialists' ("WCS") geostatistical study of the top of the Dockum; (2) interoffice memoranda generated during review of WCS' geostatistical study of the top of Dockum; (3) all correspondence to and from the commission regarding Studsvik, Inc. waste at WCS since May 25, 2010; and (4) all documents supplied to the Nuclear Regulatory Commission as part of its programmatic review of the commission pertaining to WCS. You state you have released a portion of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You contend that the information you have marked in Attachment C is excepted under section 552.101 in conjunction with section 2.390 of title 10 of the Code of Federal Regulations. A federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision Nos. 599 (1990), 373 (1983). Under section 2133 of title 42 of the United States Code, the Nuclear Regulatory Commission (the “NRC”) is authorized to issue licenses regarding the use, possession, transfer, and receipt of nuclear material and to promulgate rules or regulations related to the issuance of such licenses. *See* 42 U.S.C. § 2133(a).

You state that the commission has jurisdiction over radioactive processing and storage because “delegation of authority over radioactive waste processing and storage was granted to the State of Texas by the United States” through the NRC. You explain that the information at issue relates to a license renewal and amendment applications, and that commission staff continually assesses the WCS facility regarding weaknesses in security measures. You also state that the information reveals “where the components are specifically located and the details of the required security measures for these components[,]” and that the information is required to be kept confidential under a federal regulation. You explain that section 2.390 of title 10 of the Code of Federal Regulations provides NRC records regarding the issuance and renewal of a license may be kept secret by an executive order in the interest of national defense. 10 C.F.R. § 2.390(a)(1). You have provided this office with a copy of an order issued by the NRC, EA 05-090, pertaining to the confidentiality of a licensee’s increased control program for radioactive materials of quantities of concern. You state that the order and section 2.390 of title 10 of the Code of Federal Regulations require confidentiality. You refer to Table 1 of the order, which defines radioactive material quantities of concern (“RAM QC”), and explain that the license at issue is authorized for RAM QC. You assert that “when the [commission] reviews the renewal of the license, any documents generat[ed] by the [commission] which discuss these radionuclides and Increased Controls procedures are required to be withheld from disclosure to the public.” Based on your representations, we find the commission must withhold the information you have marked in Attachment C under section 552.101 in conjunction with 2.390 of title 10 of the Code of Federal Regulations and EA 05-090.² The remaining information must be released.

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

²As we make this determination, we need not address the remaining arguments against disclosure of this information.

responsibilities, please visit our website at 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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea L. Caldwell". The signature is fluid and cursive, with the first name being the most prominent.

Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 392730

Enc. Submitted documents

c: Requestor
(w/o enclosures)