



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2010

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

OR2010-15392

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# 396291 (TCEQ PIR No. 10.07.22.01).

The Texas Commission on Environmental Quality (the "commission") received a request for RO membrane treatment reports pertaining to specified entities.¹ You state you do not maintain information responsive to one of the specified entities.² You also state you have released some of the requested information. Although you take no position as to the public availability of the submitted reports, you state their release may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, you notified Brazos River Authority, Denton County FWSD 10, Monarch Utilities I, LP, and Brownsville Public Utility Board (the "board") of the request and of their right to submit

¹You inform us the requestor narrowed her request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

arguments to this office as to why the submitted information should not be released.³ Gov't Code § 552.305(d); *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 to disclosure under 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 a 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 from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the remaining third parties have submitted 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 to conclude that the release of any portion of the submitted information would implicate the proprietary interests of the third parties. Accordingly, none of the information at issue may be withheld 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 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. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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.

In summary, the commission must release the submitted information, but any information protected by copyright must be released in accordance with 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, or call the Office of the Attorney General's Open Government Hotline, toll free,

³We have received comments from an attorney representing the board stating that it does not object to the release of its information.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 396291

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Kent S. Rindy
Brazos River Authority
P.O. Box 7555
Waco, Texas 76714
(w/o enclosures)

Ms. Nancy Heintel
Denton County FWSD 10
c/o Law Offices of Clay E Crawford
19 East Briar Hollow Lane, Suite 245
Houston, Texas 77027
(w/o enclosures)

Mr. David L. Yohe
Monarch Utilities I, L.P.
9511 RR 620 N
Austin, Texas 78726
(w/o enclosures)

Mr. Cristobal M. Valdez
Brownsville Public Utilities Board
P.O. Box 3270
Brownsville, Texas 78532
(w/o enclosures)