



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2010-19281

Dear Ms. Angadicheril:

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# 403932 (OGC No. 133697).

The University of Texas System (the "system") received a request for (1) "information concerning releases in the vicinity of the Crane Station"; (2) files regarding the types of products historically and currently stored in former Navajo Tanks 1702 and 1705; (3) information regarding tank floor inspections or bottom replacement reports for Tanks 1705, 5702, and 5703; and (4) "additional hydrocarbon fingerprinting data (post 2004)." Although you take no position on the public availability of the submitted information, you state that the information at issue may implicate the interests of Enterprise Products Partners, LLP ("EPP"). Accordingly, you submit documentation showing that you notified EPP of the request for information and of the company's right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date of the

present request. This ruling does not address the public availability of non-responsive information, and the system is not required to release non-responsive information in response to this request.

Next, we must address the system's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A). The system states it received the present request for information on October 4, 2010. Accordingly, the system's fifteen-business-day deadline under section 552.301(e) was October 25, 2010. However, system did not submit a portion of the responsive information until November 1, 2010. Consequently, with respect to the information submitted on November 1, 2010, we find the system failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason generally exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third-party interests are at stake in this instance, we will address whether any information must be withheld under the Act. Additionally, we note the information submitted on November 1, 2010 may be subject to sections 552.117, 552.130, and 552.137 of the Government Code.¹ Because sections 552.117, 552.130, and 552.137 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the information at issue.

We note that 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from EPP. We, thus, have no basis for concluding that any portion of the submitted information constitutes proprietary information of EPP. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Accordingly, the system may not withhold any of the submitted information based on the proprietary interests of EPP.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The system may only withhold information under section 552.117(a)(1) on behalf of a former or current employee who has made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Therefore, the system must withhold the cellular telephone numbers we have marked pursuant to section 552.117(a)(1) if the employees concerned timely elected to keep the marked information confidential under section 552.024; however, the system may only withhold these cellular telephone numbers if the employees concerned paid for the cellular telephone service with their own funds.² If the employees did not make a timely request for confidentiality or did not pay for the cellular telephone service with their own funds, the information at issue must be released.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(2). Thus, the system must withhold the portion of the photograph containing a Texas license plate number we have noted on the submitted disk under section 552.130 of the Government Code.

²We have marked a representative sample of the employee's cellular telephone number that must be withheld under section 552.117(a)(1) of the Government Code if the employee concerned timely elected to keep the information confidential under section 552.024 and paid for the cellular telephone service with his own funds.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We note section 552.137(a) does not apply to the e-mail address provided by a person who has a contractual relationship with the governmental body or by the contractor’s agent. *Id.* § 552.137(c)(1). Therefore, the system must withhold the e-mail addresses we have marked under section 552.137, unless their owners consent to their release.³ However, to the extent these personal e-mail addresses fall under any of the exceptions listed under subsection 552.137(c), the marked e-mail addresses may not be withheld under section 552.137.

Finally, we note that portions of the submitted information appear 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. Open Records Decision No. 180 at 3 (1977). 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 system must withhold the cellular telephone numbers we have marked pursuant to section 552.117(a)(1) if the employees concerned timely elected to keep their personal information confidential under section 552.024 and the employees paid for the cellular telephone service with their own funds. The system must withhold the Texas license plate number we have noted on the submitted disk under section 552.130 of the Government Code. To the extent the e-mail addresses we have marked are not excluded by subsection (c), they must be withheld under section 552.137 of the Government Code, unless the owners consent to their release.⁴ The remaining information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

³We have marked a representative sample of the e-mail addresses that must be withheld under section 552.137 of the Government Code, if they are not excluded by subsection 552.137(c), unless the owners consent to their release.

⁴In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the portion of a photograph that reveals a Texas license plate number under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 403932

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Frank DeLao
Enterprise Products Partners, LLP
4500 East Highway 80
Midland Texas 79706
(w/o enclosures)