



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2011

Ms. Kathleen C. Decker  
Litigation Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2011-08330

Dear Ms. Decker:

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# 420402 (PIR # 11.03.24.12).

The Texas Commission on Environmental Quality (the "commission") received a request for records pertaining to the Alon Big Spring Refinery for a specified period of time.<sup>1</sup> You state the commission has released some of the information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you indicate the requested information may implicate the proprietary interests of Alon USA ("Alon"). Accordingly, you inform us, and provide documentation showing, you have notified Alon of the request and of its right to submit comments to this office as to why the requested information should not be released. *See* 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 the Act in certain

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<sup>1</sup>We note the commission sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

The commission claims the submitted information in Exhibit E is subject to section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes, such as section 382.041 of the Health and Safety Code, which provides "a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted." Health & Safety Code § 382.041(a). This office has concluded section 382.041 protects information that is submitted to the commission if a *prima facie* case is established the information constitutes a trade secret under the definition set forth in the Restatement of Torts and if the submitting party identified the information as being confidential when submitting it to the commission. *See* Open Records Decision No. 652 (1997).

The commission represents Alon marked the submitted information in Exhibit E as confidential when the company provided the information to the commission.<sup>3</sup> Thus, the submitted information in Exhibit E is confidential under section 382.041 to the extent this information constitutes a trade secret. As of the date of this letter, Alon has not submitted arguments to this office explaining how any of its information constitutes a trade secret. *See* Gov't Code § 552.305(d)(2)(B) (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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure). Therefore, we have no basis to conclude any of Alon's submitted information in Exhibit E constitutes a trade secret. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Consequently, the commission may not withhold any of the submitted information in Exhibit E under section 552.101 of the Government Code in conjunction with section 382.041 of the Health and Safety Code. Moreover, because Alon has failed to submit

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<sup>2</sup>We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

<sup>3</sup>We note information is ordinarily not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110).

any arguments to our office, we have no basis to conclude release of any portion of its information would cause the company substantial competitive harm. *See* Open Records Decision No. 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, release of requested information would cause that party substantial competitive harm). Consequently, the commission may not withhold any of the submitted information in Exhibit E based on proprietary interests Alon may have in this information. As you raise no further exceptions to disclosure, this information must be released to the requestor.

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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bs

Ref: ID# 420402

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Jimmy Miller  
Environmental Manager  
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East I-20 and Refinery Road  
Big Spring, Texas 79720  
(w/o enclosures)