



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

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

OR2012-06847

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# 453075.

The Texas Commission on Environmental Quality (the "commission") received a request for the application for an amendment to Low-Level Radioactive Waste ("LLRW") Disposal License R04100 and documents generated or received since December 1, 2011, pertaining to a specified condition in License R04100. You state the commission has released some of the requested information. You claim 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 information.

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 marked information 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 United States 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 you seek to withhold in Attachment C relates to a minor amendment of a LLRW disposal license. You also state that the information is required to be kept confidential under a federal regulation. 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 receives application materials such as the ones at issue, the confidentiality of the information relating to these radionuclides must be preserved under Increased Controls procedures, which include withholding such information from public disclosure. Based on your representations and our review, we find the commission must withhold the information you have marked in Attachment C under section 552.101 in conjunction with section 2.390 of title 10 of the Code of Federal Regulations and EA 05-090.¹ The commission must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

¹As we make this determination, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 453075

Enc. Submitted documents

c: Requestor
(w/o enclosures)