



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2012

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

OR2012-15177

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# 466787 (PIR No. 12.07.13.12).

The Texas Commission on Environmental Quality ("TCEQ") received a request for information related to air authorizations involving Merisol USA LLC ("Merisol"). You state some of the requested information has been released. Although you take no position on the public availability of the submitted information, you believe the information may implicate Merisol's interests under sections 552.101 and 552.110 of the Government Code. You inform us Merisol was notified of this request for the information at issue and of its right to submit arguments to this office as to why the information should not be released.¹ We received correspondence from Merisol. We have considered Merisol's comments and reviewed the information you submitted.

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. This exception encompasses information other statutes make confidential. Section 382.041 of the Health and Safety Code provides in part that "a member, employee, or agent of [TCEQ] may not disclose information submitted to [TCEQ] relating to secret

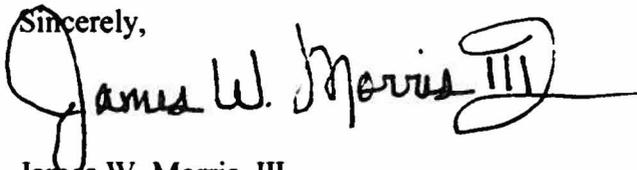
¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

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 submitted to TCEQ if a *prima facie* case is established that 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 in submitting it to TCEQ. *See* Open Records Decision No. 652 (1997). You state Merisol designated the submitted information as being confidential when it was provided to TCEQ.² Merisol informs this office, however, the company does not object to disclosure of the submitted information. Thus, as Merisol does not claim the submitted information is confidential or proprietary for purposes of the Act, none of the information at issue may be withheld under sections 552.101 or 552.110 of the Government Code. *See* Gov’t Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, as neither Merisol nor TCEQ claims an exception to disclosure, the submitted 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 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 that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

²We note information is ordinarily not confidential under the Act simply because the party submitting the information anticipates or requests confidentiality for the information. *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 did not satisfy requirements of statutory predecessor to Gov’t Code § 552.110).

Ref: ID# 466787

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Mr. Herman F. Rogers II
Environmental Engineer
Safety, Health, Environmental and Security
Merisol USA LLC
1914 Haden Road
Houston, Texas 77015
(w/o enclosures)