



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2012

Ms. Elizabeth West
Senior Attorney
General Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2012-18467

Dear Ms. West:

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# 471136 (TCEQ PIR No. 12.08.29.04).

The Texas Commission on Environmental Quality ("TCEQ") received a request for the Clean Transportation Triangle request for Grant Applications for two specified projects. You state TCEQ has made some of the requested information available to the requestor. You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, in correspondence to this office CNG Station Contractors LLC ("CNG") objects to the release of the submitted information. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted arguments and information.

CNG does not raise a specific provision of the Act to withhold the information at issue. *See* Gov't Code § 552.305. However, we understand from the context of its arguments that CNG asserts the submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the

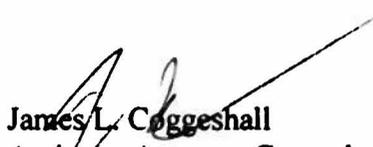
information was obtained.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm).

The submitted information consists of a fueling agreement, a ground lease, and a contract related to the installation of a CNG station that are all between CNG and private third parties. CNG asserts these agreements “have nothing to do with the amount or administration of the applied for Grant.” CNG also asserts the fueling agreement “goes into detail on fuel pricing formulas, including periodic adjustments of those formulae, which [would] cause serious harm to CNG Station if disclosed to present and potential competitors” and the ground lease contains “unique terms and pricing [that] directly affects our confidential fuel pricing approach.” Upon review, we find CNG has established the release of some of the submitted information would cause it substantial competitive injury. Therefore, the TCEQ must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we conclude CNG has made only conclusory allegations that release of the remaining information at issue would cause substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See* Gov’t Code § 552.110(b). Therefore, the TCEQ may not withhold any of the remaining information under section 552.110, but instead must release it 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, 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 471136

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

