



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2013

Ms. Christina M. Self
Acting Open Records Coordinator
Special Counsel Section
Office of General Counsel
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711-2967

OR2013-00038

Dear Ms. Self:

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# 475052.

The Railroad Commission of Texas (the "commission") received two requests for information pertaining to Boundary Ventures, Inc. ("Boundary"), including information related to an enforcement action, a specified permit, and a specified investigation.¹ You state some information will be released. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.107(1), and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.3. You also state release of some of the requested information may implicate the proprietary interests of Boundary. Accordingly, you notified this third party of the request and its right to submit arguments to this office as to why the requested information should not be released. See Gov't Code § 552.305(d) (permitting interested third party to

¹You state the commission sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 the circumstances). We have received comments from Boundary. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

You state Exhibit A consists of a completed report subject to section 552.022(a)(1) of the Government Code. We note Exhibit M contains an agreed settlement subject to section 552.022(a)(18). Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(1), (18). We have marked the information subject to section 552.022. Although you assert the completed report in Exhibit A is excepted from disclosure under section 552.103 and the settlement agreement in Exhibit M is excepted from disclosure under sections 552.103, 552.107(1), and 552.111 of the Government Code, these exceptions are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 677 (2000) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the completed report subject to section 552.022(a)(1) may not be withheld under section 552.103. Furthermore, the agreed settlement subject to section 552.022(a)(18) in Exhibit M may not be withheld under section 552.103, section 552.107(1), or section 552.111 of the Government Code. We note the Texas Supreme Court has held “[t]he Texas Rules of Civil Procedure and the Texas Rules of Evidence are ‘other law’ within the meaning of

²We assume the “representative sample” of records 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 that those records contain substantially different types of information than that submitted to this office.

section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). You contend the information subject to section 552.022(a)(1) in Exhibit A is protected by the consulting expert privilege found in rule 192.3(e) of the Texas Rules of Civil Procedure and Texas Rules of Evidence 408 and 503. Thus, we will address the applicability of Texas Rule of Evidence 408, the attorney-client privilege under rule 503, and the consulting expert privilege under Texas Rule of Civil Procedure 192.3(e) for Exhibit A. We will also address the attorney-client privilege under rule 503 and the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure for the information subject to section 552.022(a)(18) in Exhibit M.

Next, we address your arguments for the information subject to section 552.022 of the Government Code in Exhibits A and M. Rule 503 of the Texas Rules of Evidence enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client’s lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer’s representative;

(C) by the client or a representative of the client, or the client’s lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7.

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication

transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You contend the information subject to section 552.022 in Exhibits A and M are protected by the attorney-client privilege. You explain at the time the request was received, the commission was engaged in an enforcement action against Boundary. You further explain the report in Exhibit A was done at the request of a commission attorney. You state the confidentiality of Exhibits A and M have not been waived. However, you state the information in Exhibit A was furnished to the attorneys for Boundary in order to obtain a resolution of the enforcement matters. We find the commission is acting in its regulatory capacity in its dealings with Boundary. Accordingly, at the time Exhibit A was provided to Boundary, the parties did not share a common interest that would allow the attorney-client privilege to apply to Exhibit A. See TEX. R. EVID. 503(b)(1)(c); *In re Monsanto*, 998 S.W.2d 917, 922 (Tex. App.—Waco 1999, orig. proceeding) (discussing the “joint-defense” privilege incorporated by rule 503(b)(1)(C)). Furthermore, we find in releasing the report in Exhibit A, the commission has waived the attorney-client privilege with respect to Exhibit A. See TEX. R. EVID. 511; *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 554 (Tex. 1990) (attorney-client and work product privileges waived when privileged information was disclosed to Federal Bureau of Investigation, Internal Revenue Service, and Wall Street Journal); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 649 (Tex. 1986). Furthermore, the agreed settlement subject to section 552.022(a)(18) in Exhibit M was issued by the commission and signed by an attorney for Boundary. Therefore, we find you have failed to demonstrate how the information in Exhibit A or the agreed settlement in Exhibit M consists of privileged attorney-client communications. See TEX. R. EVID. 503(b)(1)(c). Accordingly, the commission may not withhold any of the information subject to section 552.022 under Texas Rule of Evidence 503.

Next, we address your argument under rule 192.3 of the Texas Rules of Civil Procedure for Exhibit A. The consulting expert privilege is found in rule 192.3. A party to litigation is not required to disclose the identity, mental impressions, and opinions of consulting experts whose mental impressions or opinions have not been reviewed by a testifying expert. See TEX. R. CIV. P. 192.3(e). A “Consulting Expert” is defined as “an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert.” *Id.* 192.7.

You contend the information in Exhibit A was created by the commission's consulting expert regarding the facility that is the subject of the enforcement action at issue. You state the report has not been reviewed by a testifying expert. However, as previously noted, you state Exhibit A was furnished to the attorneys for Boundary in order to obtain a resolution of the enforcement matters. Thus, we find the commission's voluntary disclosure of Exhibit A waived its privilege. See TEX. R. EVID. 511; see also *Jordan*, 701 S.W.2d at 649. Accordingly, the commission may not withhold Exhibit A under rule 192.3.

Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. For purposes of section 552.022 of the Government Code, information is confidential under rule 192.5 only to the extent it implicates the core work product aspect of the work product privilege. See ORD 677 at 9-10. Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. See TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate the material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *Id.*

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and (2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. See *Nat'l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204. The second part of the work product test requires the governmental body to show the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney's or an attorney's representative. See TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). See *Caldwell*, 861 S.W.2d at 427.

You contend the information subject to section 552.022(a)(18) in Exhibit M consists of attorney work product. However, as noted above, the information at issue consists of an agreed settlement signed by the commission and an attorney for Boundary regarding an enforcement action initiated by the commission against Boundary. Upon review, we find the commission has failed to demonstrate the applicability of the attorney work product privilege to the information at issue in Exhibit M. Thus, the commission may not withhold the

information at issue on the basis of the work product privilege in Texas Rule of Civil Procedure 192.5.

Next, you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 408 as an exception to disclosure for portions of 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. This section encompasses information made confidential by other statutes. Rule 408 of the Texas Rules of Evidence governs the admissibility of information developed through compromise negotiations. *See* TEX. R. EVID. 408. However, rule 408 does not explicitly provide that information is confidential. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Accordingly, we find the commission may not withhold any of the information at issue under section 552.101 in conjunction with rule 408.

We now consider the arguments for the information not subject to section 552.022. Boundary and the commission each raise section 552.103 for portions of the remaining information not subject to section 552.022. Because section 552.103 protects only the interests of a governmental body, as distinguished from exceptions intended to protect the interests of third parties, we do not address Boundary's argument under section 552.103. *See* Open Records Decision Nos. 542 (statutory predecessor to section 552.103 does not implicate rights of third party), 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). Accordingly, the commission may not withhold any of the submitted information on this basis of Boundary's arguments under section 552.103. However, we will consider the commission's arguments under section 552.103.

Section 552.103 provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state portions of the remaining information in Exhibits B through M are related to a pending enforcement action, Docket No. 03-0250714, against Boundary concerning the operations of one of Boundary's facilities. You explain the proceeding is a contested case within the context of the Government Code, which is governed by the Administrative Procedure Act ("APA"), chapter 2001 of the Government Code. This office has concluded a contested case under the APA constitutes litigation for purposes of the statutory predecessor to section 552.103. Open Records Decision No. 588 (1991). We note the enforcement action was initiated prior to these requests for information. Based on your representations and our review, we determine litigation involving the commission was pending on the date the commission received the request for information. Furthermore, we find the remaining information at issue in Exhibits B through M relates to the pending litigation. Accordingly, the commission may generally withhold the information at issue in Exhibits B through M under section 552.103 of the Government Code.³

We note, however, the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery procedures. *See* ORD 551 at 4-5. Therefore, if the opposing party has seen or had access to information relating to anticipated litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In this instance, the opposing party in the pending litigation has already seen or had access to some of the information at issue. Therefore, the commission may not withhold the information we have marked under section 552.103. With the exception of the information we have marked, the commission may withhold the remaining information at issue that is not subject to section 552.022 in Exhibits B through F, H through J, and L through M under section 552.103. We note the applicability of section 552.103 ends once the related litigation

³As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You argue a portion of the information seen by the opposing party is subject to section 552.107. Further, Boundary raises section 552.107(1) of the Government Code for Exhibits N through R. Section 552.107(1) excepts from disclosure "information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct[.]" Gov't Code § 552.107(1). Section 552.107(1), however, is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 522 (1989) (discretionary exceptions intended to protect only interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties). As the commission does not seek to withhold Exhibits N through R under section 552.107, we find section 552.107(1) of the Government Code is not applicable to this information. Accordingly, the commission may not withhold any information in Exhibits N through R under section 552.107(1). *See* ORD 676. However, we will consider the commission's arguments under section 552.107(1) for the remaining information at issue in Exhibits L and M. The elements of the privilege under section 552.107 are the same as those discussed above for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim the information seen by the opposing party in Exhibits L and M are protected by the attorney-client privilege. However, the information at issue are communications with the opposing party to the litigation. Further, the parties did not share a common interest that would allow the attorney-client privilege to apply to the communications. Accordingly, none of the remaining information at issue in Exhibits L and M may be withheld under section 552.107(1) of the Government Code.

You also claim section 552.111 for portions of the remaining information seen by the opposing party. Section 552.111, which excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency," encompasses the attorney work product privilege in rule 192.5. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); ORD 677 at 4-8. Section 552.111 protects work product as defined in rule 192.5(a) as:

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including

the party's attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party's representatives or among a party's representatives, including the party's attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under the work product aspect of section 552.111 bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party's representative. *Id.*; ORD 677 at 6-8. The test to determine whether information was created or developed in anticipation of litigation is the same as that discussed above concerning rule 192.5.

You contend the remaining information at issue in Exhibits K, L, and M is protected by the attorney work product privilege. As noted above, the information at issue consists of communications with the opposing party to the litigation. Thus we find the commission has failed to demonstrate the applicability of the attorney work product privilege to the remaining information at issue in Exhibits K, L, and M. Accordingly, none of the remaining information at issue may be withheld under the attorney work product privilege in section 552.111.

Boundary seeks to withhold portions of its information under section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates

or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.⁴ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Boundary asserts portions of its information constitutes trade secrets. Upon review, we find Boundary has demonstrated its client information, which we have marked, constitutes trade secrets of the company. Accordingly, the commission must withhold the information we have marked under section 552.110(a) of the Government Code.⁵ However, we find

⁴The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

⁵As our ruling is dispositive, we need not address Boundary's remaining argument against disclosure of this information.

Boundary has failed to demonstrate any portion of the remaining information at issue meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 402 (section 552.110(a) does not apply unless information meets definition of trade secret and necessary factors have been demonstrated to establish trade secret claim). Accordingly, none of the remaining information at issue may be withheld under section 552.110(a).

Boundary also claims portions of its information is subject to section 552.110(b). Upon review, we find Boundary has established release of its financial statements, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Thus, the commission must withhold the information we have marked under section 552.110(b) of the Government Code.⁶ However, Boundary has made only conclusory allegations release of any of the remaining information it seeks to withhold would result in substantial competitive injury. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, we find none of the remaining information at issue may be withheld under section 552.110(b) of the Government Code.

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).⁷ Gov't Code. § 552.137(a)-(c). Accordingly, the commission must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, with the exception of the information we have marked subject to section 552.022 in Exhibits A and M and the information to which the opposing party to the litigation has seen or had access, the commission may withhold the information at issue in Exhibits B through F, H through J, and L through M under section 552.103 of the Government Code. The commission must withhold the information we have marked under section 552.110 of the Government Code. The commission must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner

⁶As our ruling is dispositive, we need not address Boundary's remaining argument against disclosure of this information.

⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the address has affirmatively consented to its release. The remaining 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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 475052

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Boundary Ventures, Inc.
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