



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2016

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

OR2016-18595

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# 622894 (Ref. No. 16-27734).

The Texas Commission on Environmental Quality (the "commission") received a request for the sample calculations and supporting documentation of the emissions inventories of specified plants.¹ You state you have released some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Luminant Generation Company, LLC, and Luminant Energy Company, LLC (collectively, "Luminant"), and the Lower Colorado River Authority (the "authority"). Accordingly, you state, and provide documentation showing, you notified Luminant and the authority of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304, .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

¹We note the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

exception in the Act in certain circumstances). We have received comments from Luminant and the authority. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the authority objects to disclosure of information the commission has not submitted to this office for review. This ruling does not address information that was not submitted by the commission and is limited to the information the commission has submitted for our review.² *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Luminant states it has competitors. In addition, Luminant states it has expended significant resources to keep its information at issue within the company. Luminant further states release of the information at issue would be extremely valuable to its competitors and would undercut Luminant’s ability to compete in future bidding situations. After review of the information at issue and consideration of the arguments, we find Luminant has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the commission may generally withhold the information we have indicated under section 552.104(a) of the Government Code. We note, however, under the federal Clean Air Act emission data must be made available to the public, even if the data otherwise qualifies as trade secret information. *See* 42 U.S.C. § 7414(c). Similarly, we find emission data must be made available even if the data is otherwise excepted under section 552.104 of the Government Code. *See English v. Gen. Elec. Co.*, 469 U.S. 72, 79 (1990) (noting state law is preempted to extent it actually conflicts with federal law). Emission data is only subject to the release provision in section 7414(c) of title 42 of the United States Code if it was collected pursuant to subsection (a) of that section. *See* 42 U.S.C. § 7414(c). Thus, to the extent any of the information we have indicated constitutes emission data for the purposes of section 7414(c) of title 42 of the United States Code, the commission must release such information in accordance with federal law.³ Regardless, the commission must release the remaining information.

²As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

³As we are able to make this determination, we need not address the remaining arguments against disclosure of this 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 622894

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclsoures)