



December 14, 2000

Ms. Margaret Hoffman, Director  
Environmental Law Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2000-4703

Dear Ms. Hoffman:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142242.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information regarding a Mobil Oil Corporation Refinery in Beaumont ("Mobil"), including in particular any pollution-related activities that occurred there. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by statute. *See* Gov't Code §552.101. Section 382.041(a) of the Health and Safety Code provides in part, with exceptions which do not appear to apply here, that "a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted." In Open Records Decision No. 652 (1997), this office concluded that section 382.041 of the Health and Safety Code protects information submitted to the commission if a *prima facie* case is established that the information is a trade secret under the definition set forth in the Restatement of Torts, and if the information was identified as confidential by the submitting party when it was submitted to the commission.

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<sup>1</sup>This letter ruling assumes that the representative sample of information which you submitted is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the commission to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.110 of the Government Code protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision; and (2) commercial 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. A "trade secret"

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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, as for example the amount or other terms of a secret bid for a contract or the salary of certain *employees*. . . . *A trade secret is a process or device for continuous use in the operation of the business.* Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, 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) (emphasis added). *See also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others 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 to [its] competitors;

- 5) the amount of effort or money expended by [the company] in developing this information; and
- 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 No. 232 (1979).

Pursuant to section 552.305(d) of the Government Code, if release of a person's proprietary information may be subject to exception under sections 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under section 552.301 must make a good faith attempt to notify that person of the request for the attorney general decision and of the person's right to submit comments as to why the requested information should not be released. The commission notified Mobil in accordance with section 552.305(d). Mobil responded to the commission's notification and argues that the information in question was marked confidential and should be withheld from disclosure under sections 552.101 and 552.110. After examining the commission's arguments, the comments submitted by Mobil, and the submitted documents, we conclude that Mobil has presented a *prima facie* case that the submitted information constitutes trade secrets which are excepted from disclosure under section 552.110(a) of the Government Code. Therefore, the commission must withhold the submitted information under section 552.101 in conjunction with section 382.041 of the Health and Safety Code and section 552.110.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

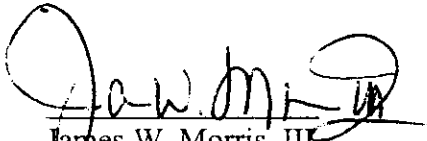
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



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

JWM/er

Ref: ID# 142242

Encl: Submitted documents

cc: Ms. Dorothy Miller  
Gallagher & Gallagher  
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Boston, Massachusetts 02129-4533  
(w/o enclosures)