



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2017

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

OR2017-25565

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# 683686 (PIR No. 17-35466).

The Texas Commission on Environmental Quality ("TCEQ") received a request for specified information pertaining to a specified facility. You claim the submitted information is excepted from disclosure under sections 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Wisconsin Proppants LLC ("Wisconsin"). Accordingly, you state, and provide documentation showing, you notified Wisconsin of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(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 exception in the Act in certain circumstances). We have received arguments from Wisconsin. We have considered the submitted arguments and reviewed the submitted information.

Wisconsin asserts the submitted information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 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. Wisconsin states it has competitors. In addition, Wisconsin states the information at issue, if released, would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find Wisconsin has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude TCEQ may generally withhold the submitted information 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 submitted information constitutes emission data for the purposes of section 7414(c) of title 42 of the United State Code, TCEQ must release such information in accordance with federal law, notwithstanding any of the remaining arguments.¹

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 683686

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)