



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 30, 2019

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

OR2019-27317

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# 788386 (PIR No. 19-48433).

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to a specified location and certain facilities near the location. You state the commission will release some information upon payment of costs.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Sandy Creek Energy Associates, L.L.C. ("Sandy Creek"). Accordingly, you state, and provide documentation showing, you notified the interested third party 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 reviewed the submitted information.

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<sup>1</sup>We note, and you provide documentation showing, you sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See Gov't Code* § 552.2615.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Sandy Creek explaining why the submitted information should not be released. Therefore, we have no basis to conclude Sandy Creek has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the commission may not withhold any portion of the submitted information on the basis of any proprietary interest Sandy Creek may have in the information.

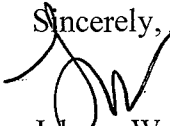
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 382.041 of the Health and Safety Code, which provides, in part, "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." Health & Safety Code § 382.041(a). This office has concluded section 382.041 protects information that is submitted to the commission if a *prima facie* case is established the information constitutes a trade secret under the definition set forth in the Restatement of Torts and if the submitting party identified the information as being confidential when submitting it to the commission. *See* Open Records Decision No. 652 (1997). The commission states Sandy Creek marked the information at issue as confidential when it provided the submitted information to the commission. Thus, the submitted information is confidential under section 382.041 to the extent it constitutes a trade secret. However, as noted above, Sandy Creek has not raised any arguments claiming the information at issue constitutes a trade secret. *See* Gov't Code § 552.305(d)(2)(B). Therefore, we have no basis to conclude any portion of the information at issue constitutes a trade secret. *See id.* § 552.110; ORDs 552 at 5, 542 at 3. Consequently, the commission may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 382.041 of the Health and Safety Code. The commission must release the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jahana Ward  
Assistant Attorney General  
Open Records Division

JW/gw

Ref: ID# 788386

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)