



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

October 28, 2019

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

OR2019-30367

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# 793493 (PIR No. 19-49005).

The Texas Commission on Environmental Quality (the "commission") received a request for information related to two specified permit applications. You state the commission has released some information. Although the commission takes no position as to whether the submitted information is excepted under the Act, the commission states release of the submitted information may implicate the proprietary interests of Pennco, Inc. ("Pennco"). Accordingly, you state, and provide documentation showing, the commission notified Pennco of the request for information and of the right to submit arguments to this office as to why the submitted information 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.

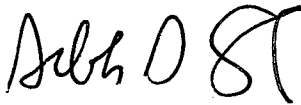
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Pennco explaining why the submitted information should not be released. Therefore, we have no basis to conclude Pennco 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 the submitted information on the basis of any proprietary interest Pennco may have in the information. As no exceptions to disclosure have been raised, 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,



Deborah Southerland  
Attorney  
Open Records Division

DS/rm

Ref: ID# 793493

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)