



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 20, 2019

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

OR2019-32856

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# 797777 (PIR No. 19-49429).

The Texas Commission on Environmental Quality (the "commission") received a request for a specified permit application filed by a named party.<sup>1</sup> You state you have 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 this information may implicate the proprietary interests of Gulf Coast Ammonia, L.L.C. ("Gulf Coast"). Accordingly, you state, and provide documentation showing, you notified this 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 received arguments from Gulf Coast. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The commission states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Gulf Coast 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. Gulf Coast states it has competitors. In addition, Gulf Coast states the information at issue, if released, would give the competitors an advantage. After review of the information at issue and consideration of the arguments, we find Gulf Coast has established the release of the information it indicated would give advantage to a competitor or bidder. Thus, we conclude the commission 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 conflicting state provisions, including 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 States Code, the commission must release such information in accordance with federal law, notwithstanding any of the remaining arguments.<sup>2</sup>

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,



Sean McCormick  
Attorney  
Open Records Division

SMC/eb

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

Ref: ID# 797777.

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)