



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2020

Ms. Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2020-11038

Dear Ms. Backens:

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# 819391 (ORR# 20-51359-PIR).

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to a specified chemical manufacturing plant.¹ You state the commission has released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of The Chemours Company FC, LLC ("Chemours"). Accordingly, you state, and provide documentation showing, you notified Chemours of the request for information and of its right to submit arguments to this office

¹ You state the commission sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the commission received the required deposit on January 20, 2020. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit). You also state the commission sought and received clarification of the information requested. *See id.* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request). Further, we note we asked the commission to provide additional information pursuant to section 552.303 of the Government Code. *See id.* § 552.303(c) (d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). The commission has informed this office it does not wish to make any additional arguments against disclosure of the information at issue.

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 considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from counsel for the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Chemours argues some of its information consists of trade secrets subject to section 552.110(b). However, we find Chemours has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the commission may not withhold any of the information at issue under section 552.110(b) of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure “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[.]” *Id.* § 552.110(c). Chemours argues some of its information consists of commercial or financial information subject to section 552.110(c). Chemours argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Chemours has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the commission must withhold the information we indicated under section 552.110(c) of the Government Code. However, we find Chemours has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the commission may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code. The commission must release the remaining 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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/jxd

Ref: ID# 819391

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)