



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2020

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

OR2020-32124

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# 859148 (TCEQ PIR No. 20-54589).

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to specified permits for hazardous waste disposal and air quality, excluding two specified categories of information.<sup>1</sup> You state the commission will release some information upon payment of costs. We understand the commission will redact certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> 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 a third party. Accordingly, you state, and provide documentation showing, you notified Heritage Thermal of Texas, LLC ("HTT") of the request for information and of its 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

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<sup>1</sup>We note the commission asked for and received clarifications regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

explain applicability of exception in the Act in certain circumstances). We have received comments from HTT. We have considered the submitted arguments and reviewed the submitted information.

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[.]” Gov’t Code § 552.110(c). HTT argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find HTT has demonstrated 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 marked under section 552.110(c) of the Government Code.<sup>3</sup> 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 859148

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>3</sup> As our ruling is dispositive, we need not address HTT’s remaining argument against disclosure.