



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 1, 1997

Mr. J. Robert Giddings  
The University of Texas System  
Office of the General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2981

OR97-1754

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107516.

The University of Texas System (the "system") received two requests for information relating to the Austin Technology Incubator ("ATI"), which was established by The University of Texas at Austin for the purpose of fostering the development of emerging technology-based businesses in Austin.<sup>1</sup> The first request is for thirteen categories of information. The system has made some of this information available to the requestor. You have submitted representative samples of the remaining information to this office for review.<sup>2</sup> You contend that the remaining information is excepted from disclosure under section 552.110 of the Government Code. The second request, sent by fax to the system and to this office, is in part illegible, and the system has asked the requestor to clarify his second request. *See* Gov't Code § 552.222(b) To our knowledge, the requestor has not clarified his second request. Therefore, the only issue before us at this time is whether the submitted information is excepted from disclosure under section 552.110.

Businesses that are "admitted" to ATI's program are required to submit business plans to ATI. These business plans include information such as market analyses, financial projections, and funding requirements. On behalf of those companies participating in the ATI program, you contend that the information they submitted to ATI is excepted from disclosure under section 552.110 as commercial or financial information.

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<sup>1</sup>In a letter to this office, the requestor indicates that he has also requested information relating to "The Capital Network (a.k.a. TCN, f.k.a. Texas Capital Network)." However, the system has not asked this office for a ruling on information specifically related to The Capital Network.

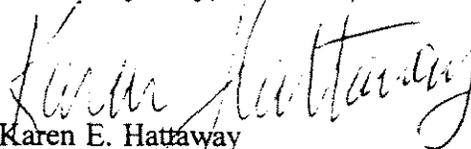
<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.110 protects the property interests of third parties by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Commercial or financial information is excepted from disclosure under the second prong of section 552.110. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted). You have demonstrated that portions of the submitted information, including marketing strategies and data relating to profits, losses, and financial resources, should be protected by section 552.110 as commercial or financial information. See *e.g.*, Open Records Decision Nos. 639 (1996), 309 (1982). We have marked the protected information accordingly. As releasing this information would cause the participating companies to suffer substantial competitive harm, the system must withhold this information from disclosure under section 552.110. The information which we have not marked does not appear to be the type of information protected by section 552.110. See Open Records Decision Nos. 639 (1996), 554 (1990), 552 (1990) (section 552.110 only applicable to secret information that gives its owner some competitive advantage over those who do not have access to information). Therefore, the system must release the unmarked information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 107516

Enclosures: Marked documents

cc: Mr. Stephen Lisson  
Initiate  
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(w/o enclosures)

