



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 26, 1998

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
111 E. 17th Street, Room 104
Austin, Texas 78774-0100

OR98-0251

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112073.

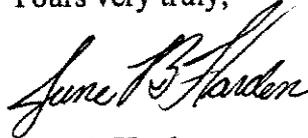
The Comptroller of Public Accounts (the "comptroller") received a request for various audit information. You state that most of the requested information has been provided to the requestor. However, you claim that the beer distributor summaries are excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.110 of the Government Code protects the property interests of private 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. 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 for commercial and financial information. 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. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 (1996) at 4. 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. *Id.*

You explain that the "sales information on the beer summaries provides a supplement to information provided by the retailer and aids in an accurate calculation of the amount of tax due when a retailer does not have sufficient records of the business activities." You argue that disclosure of the information will "seriously jeopardize our ability to obtain this type of information in the future." You state that one beer distributor has informed your office that he will not freely provide this information if it is subject to the Open Records Act. Additionally, you argue that disclosure of this information to the public will increase the difficulty of achieving an accurate assessment of whether a retailer has a tax deficiency or is entitled to a refund. Based on your arguments and the submitted materials, we find that you may withhold the submitted information under section 552.110 based on the first prong of the *National Parks* test.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 112073

Enclosures: Submitted documents

cc: Mr. Roy D. Belk, C.P.A.
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Odessa, Texas 79761
(w/o enclosures)