



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1998

Mr. John L. Laakso
Executive Director
Public Utility Commissioner of Texas
P.O. Box 13326
Austin, Texas 78711-3326

OR98-1955

Dear Mr. Laakso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117540.

The Public Utility Commission of Texas (the "commission") has received a request for "the list of all pay phones operated by Extra Effort Pay Phones, Inc., including street address, and phone number." The commission regulates pay telephone providers pursuant to the Utility Code. By rule, the commission requires providers to disclose their pay telephone locations as part of the "Texas Pay Telephone Provider Registration Statement and Certificate of Compliance." 16 T.A.C. sec. 23.54(b). Section 23.54(b) states that the telephone location information "shall be confidential unless the Attorney General issues a letter opinion, or a court of competent jurisdiction rules otherwise." You raise no exceptions to disclosure on behalf of the commission. However, because third party interests are implicated, you raise Government Code section 552.305.

Pursuant to section 552.305, we notified Extra Effort Pay Phones, Inc. ("Extra Effort") of this open records request. See Gov't Code § 552.305; Open Records Decision No. 542 (1990). Extra Effort responded to our notification by asserting that the requested information is protected from disclosure by Government Code sections 552.101, 552.104, and 552.110.

Section 552.110 excepts from disclosure trade secrets and commercial or financial information obtained from a person and confidential by statute or judicial decision. Section 552.110 is divided into two parts: (1) trade secrets and (2) commercial or financial information, and each part must be considered separately.

In Open Records Decision No. 639 (1996), the Attorney General held that the case of *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), which interprets exemption four of the federal Freedom of Information Act ("FOIA), was a "judicial decision" for purposes of section 552.110 of the Government Code. The *National Parks & Conservation Ass'n* case treats commercial or financial information as confidential

if disclosure of the information is likely . . . either . . . (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

498 F. 2d at 770 (footnote omitted). "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); Open Records Decision No. 639 at 4 (1996).

Here, we find that Extra Effort has made a sufficient showing that they actually face competition and that substantial competitive injury would likely result from disclosure of the requested information. Therefore, the commission must withhold the requested information as confidential "commercial or financial" information under section 552.110.¹

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 questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref.: ID# 117540

¹Because we find that you must withhold the requested information under the "commercial or financial information" branch of section 552.110, we need not address Extra Effort's "trade secret" claim under that section, or its claims under sections 552.101 and 552.104.

Enclosures: Submitted documents

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(w/o enclosures)