



May 12, 2000

Mr. Lee Haney
District Attorney
35th Judicial District
Courthouse
Brownwood, Texas 76801

OR2000-1862

Dear Mr. Haney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135697.

Brown County (the "county") received a request for "all financial data you may have regarding Medevac and Brown County." Although you express no opinion on the release of the requested information, you contend that section 552.110 of the Government Code may be implicated because Medevac has indicated that portions of the submitted information contain proprietary information.

Since the property rights of a third party may be implicated by the release of the requested information, the county notified Medevac of the request for information. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *Open Records Decision No. 542 (1990)* (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Public Information Act in certain circumstances). Medevac submitted its arguments asserting that "disclosure would cause substantial competitive harm to [Medevac] . . . and would place the requestor in an unfair competitive advantage."

Section 552.110 protects the property interests of third parties by excepting from disclosure two types of information: (a) trade secrets, and (b) 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. An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. *See generally National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing

that substantial competitive injury would likely result from disclosure of the requested information.

After a review of Medevac's arguments and the information submitted to this office by the county, we conclude that Medevac has not established that disclosure of the submitted information would cause substantial competitive harm to Medevac. The information is not protected from required disclosure by section 552.110(b).¹ Therefore, the county must release the requested information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

¹Medevac also argues that the information is protected by section 252.049 of the Local Government Code in conjunction with section 552.101 of the Government Code. However, section 252.049 protects confidential information in bids or proposals involving a municipality. We are not aware of the involvement of any municipality in this situation. Further, it is not clear from the documents themselves that they are related to a competitive sealed bid.

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/ljp

Ref: ID# 135697

Encl. Submitted documents

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