



July 22, 2002

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2002-4009

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165970.

The City of Austin (the "city") received a request for "a complete copy of the contract for the 'Enterprise License' between Microsoft and the city entered into in January of this year." As responsive to the request, you have submitted to this office a 13-page Microsoft Enterprise Enrollment ("Enterprise Enrollment") for the city with an effective date of December 21, 2001, and a Microsoft Enterprise 5 Standard Enrollment Acceptance Letter ("Acceptance Letter") dated December 21, 2001. You state that the release of parts of the requested information may implicate the proprietary rights of Microsoft Corporation ("Microsoft"). Consequently, you notified Microsoft of the request for information under section 552.305 of the Government Code. You argue that parts of the requested information are excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Microsoft does not object to the release of the Enterprise Enrollment document or to most of the contents of the Acceptance Letter. Microsoft contends, however, that Volume Licensing Product Keys ("product keys") that are contained in the Acceptance Letter are excepted from public disclosure under section 552.110 of the Government Code. We have considered all claimed exceptions and reviewed the submitted information.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) 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. Microsoft asserts that its product keys are covered by both aspects of section 552.110.

With respect to the commercial and financial information prong of section 552.110, the exception requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. Gov't Code § 552.110(b); *see* Open Records Decision No. 661 (1999). We find that Microsoft has shown that release of the product keys would cause it substantial competitive harm. Accordingly, the city must withhold this information under section 552.110(b).¹ Microsoft raises no objection to the release of the remaining requested information. Consequently, the city must release to the requestor the Enterprise Enrollment document as well as the information in the Acceptance Letter that is not excepted from disclosure under section 552.110(b).

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

¹Because we resolve the issue under section 552.110(b), we need not address any remaining arguments.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 165828

Enc: Submitted documents

c: Mr. Joe Barr
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(w/o enclosures)