



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2004

Mr. J. Kevin Patteson
Assistant General Counsel
Office of the Governor
P. O. Box 12428
Austin, Texas 78711

OR2004-9628

Dear Mr. Patteson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213284.

The Office of the Governor (the "governor") received a request for "all documents relating to waiver of the retained jobs requirement of Texas Enterprise Zone Program Rule 176.5(e)." Upon subsequent contact with this office, you withdraw the governor's assertion of sections 552.101, 552.104, 552.105, 552.107, 552.110, 552.111, and 552.131 of the Government Code and state that the governor takes no position with regard to the release of the requested information. However, you have notified interested third party Ernst & Young LLP ("Ernst & Young") of the request for information pursuant to section 552.305 of the Government Code. *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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act ("Act") in certain circumstances). The governor has submitted the information at issue to this office. We also received correspondence from Ernst & Young. We have considered its arguments and reviewed the submitted information.

Ernst & Young asserts that portions of its information are excepted from disclosure under section 552.104 of the Government Code. Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to the governmental body's interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). However, section 552.104 is not designed to protect the interests of private parties that

submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). The governor has not argued that the release of the submitted information would harm its interests in a particular competitive situation. Therefore, the submitted information may not be withheld pursuant to section 552.104 of the Government Code.

Next, Ernst & Young asserts section 552.110(b) of the Government Code, which protects “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999).

Upon review, we find that Ernst & Young has failed to demonstrate that the submitted information constitutes commercial or financial information, the release of which would cause it substantial competitive harm. *See* Gov’t Code § 552.110(b). Accordingly, none of the submitted information may be withheld under section 552.110.

Finally, we note that section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

....

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee’s work e-mail address or a business’s general e-mail address or web address. We find that the e-mail addresses we have marked are excepted from disclosure under section 552.137(a). Accordingly, we conclude that, unless consent to release has been granted, the governor must withhold these e-mail addresses pursuant to section 552.137(a) of the Government Code.

In summary, we conclude that, unless consent to release has been granted, the governor must withhold the e-mail addresses we have marked pursuant to section 552.137(a) of the Government Code. As there are no additional arguments, the remaining submitted information must be released.

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 213284

Enc: Submitted documents

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