



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2005

Ms. Pamela Smith
Senior Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2005-06458

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 228493.

The Texas Department of Public Safety (the "department") received a request for information related to Enterprise Leasing Company of DFW ("Enterprise"). You indicate that the submitted financial statements may be subject to third party proprietary interests. Accordingly, pursuant to section 552.305 of the Government Code, you notified interested third party Enterprise of the request and of its opportunity to submit comments to this office. *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 to disclosure in certain circumstances). Enterprise provided this office with arguments against disclosure for the submitted information. We have considered the submitted arguments and have reviewed the information you have submitted.

Enterprise argues that its financial statements are excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) 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. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Enterprise argues that its financial statements should be withheld from disclosure under section 552.110 because they constitute commercial or financial information the release of which would cause substantial competitive harm to Enterprise. *See* Gov't Code § 552.110(b). Enterprise states that the release of this information would provide its competitors with access to its financial strategy, information regarding Enterprise's domestic and foreign operations, its new and used car inventories, the composition and value of Enterprise's property and equipment, Enterprise's assets and liabilities, and its method of accounting. Enterprise argues that such information would allow its competitors to ascertain its global business strategies and market status. Enterprise also argues that its competitors could use such information to help develop their own business plans and to target areas of the market that Enterprise has not yet established, thereby limiting Enterprise's potential growth. Based on our review of Enterprise's arguments and the information at issue, we conclude that Enterprise has demonstrated that the release of its financial statements would cause substantial competitive harm to Enterprise. Accordingly, we conclude that the department must withhold the submitted financial statements from disclosure in its entirety pursuant to section 552.110(b) of the Government Code. *See* Open Records Decision No. 639 at 4 (1996).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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,


James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 228493

Enc. Submitted documents

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