



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2006

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

OR2006-07034

Dear Mr. Turner:

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# 253017.

The Office of the Governor (the "governor") received a request for communications between Vought Aircraft Industries, Inc. ("Vought") and the governor and/or his staff. Although you believe that some of the submitted information may be exempted from disclosure under sections 552.101, 552.104, 552.110, and 552.131 of the Government Code, you have submitted no arguments in support of those exceptions. Instead, you notified Vought of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> We received correspondence from an attorney for Vought. We have considered Vought's arguments and have reviewed the submitted information.

Initially, we address Vought's representation that some of the submitted information is the subject of Open Records Letter No. 2004-10792 (2004). We note that this office subsequently withdrew Open Records Letter No. 2004-10792 and substituted Open Records Letter No. 2004-10792A (2004) as the correct ruling. In Open Records Letter No. 2004-10792A, we determined that portions of the information at issue were exempted from disclosure under sections 552.107(1), 552.110(b), and 552.111 of the Government Code and

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<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

that the governor was required to release the remaining information. We have not been informed of any change in the law, facts, and circumstances on which the prior ruling is based. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). Therefore, to the extent that Open Records Letter No. 2004-10792A encompasses the information that is responsive to the present request, the governor must release or withhold all such information in accordance with the prior ruling.<sup>2</sup> To the extent that Open Records Letter No. 2004-10792A does not encompass the information that is responsive to the present request, the governor must comply with the rest of this ruling.

Vought also asserts that one of the submitted documents is excepted from disclosure under section 552.131(b) of the Government Code.<sup>3</sup> We note, however, that section 552.131(b) is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In this instance, neither the governor nor any other governmental entity has asserted a claim under section 552.131(b). Therefore, the governor may not withhold any of the submitted information under section 552.131(b) of the Government Code.

Vought also raises sections 552.110(b) and 552.131(a) of the Government Code with respect to information relating to its bank account. We note, however, that the information in question is encompassed by section 552.136 of the Government Code.<sup>4</sup> This exception provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

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<sup>2</sup>Vought has specifically indicated to this office, and our review has confirmed, that Open Records Letter No. 2004-10792A encompasses the document that Vought has attached to it; arguments as "Annex F."

<sup>3</sup>Vought also states that the document in question is "a prior iteration of a document already protected from disclosure" by Open Records Letter No. 2004-10792. As previously noted, however, this office withdrew Open Records Letter No. 2004-10792 and substituted Open Records Letter No. 2004-10792A as the correct ruling. In Open Records Letter No. 2004-10792A, we specifically concluded that the governor could not withhold any information under section 552.131(b) of the Government Code.

<sup>4</sup>Unlike other exceptions to disclosure, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The governor must withhold Vought's bank account and routing transit numbers, which we have marked, under section 552.136.

In summary: (1) to the extent that Open Records Letter No. 2004-10792A encompasses the information that is responsive to the present request, the governor must release or withhold all such information in accordance with the prior ruling; and (2) Vought's bank account and routing transit numbers must be withheld under section 552.136 of the Government Code. The rest of the 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).

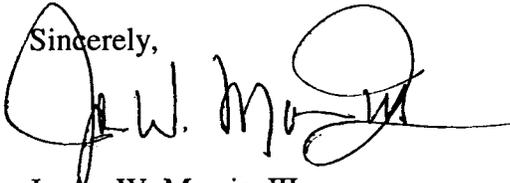
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 253017

Enc: Submitted documents

c: Ms. Kelley Shannon  
Associated Press  
1005 Congress Avenue, Suite 995  
Austin, Texas 78701  
(w/o enclosures)

Mr. Kevin McGlinchey  
Vought Aircraft Industries, Inc.  
P.O. Box 655907  
Dallas, Texas 75265-5907  
(w/o enclosures)

Mr. Bryce Seki  
Fulbright & Jaworski L.L.P.  
300 Convent Street, Suite 2200  
San Antonio, Texas 78205-3792  
(w/o enclosures)