



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2007

Ms. Cheryl Gray  
Administrative Assistant  
Legal Services Division  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2007-04050

Dear Ms. Gray:

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# 275471.

The Texas Veterans Land Board (the "board") received a request for all proposals submitted in response to the board's RFP for loan servicing. You state you will release some of the requested information but assert that release of the submitted information may implicate the proprietary interests of third parties.<sup>1</sup> Accordingly, you inform us that you notified the interested third parties of the request and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely

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<sup>1</sup>The interested third parties are as follows: Amerinational Community Services, Inc. ("Amerinational"); BSI Financial Services, Inc.; Cenlar FSB ("Cenlar"); Dovenmuehle Mortgage, Inc. ("Dovenmuehle"); and Origen Financial, Inc. ("Origen"). You state that Evergreen Note Servicing did not object to the release of the proposal it submitted.

on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Record Letter No. 2007-03108 (2007). As the information at issue is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the board must continue to rely on this ruling as a previous determination and withhold or release this information in accordance with Open Record Letter No. 2007-03108. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We next address the submitted information that was not at issue in Open Records Letter No. 2007-03108, which consists of the proposal submitted by Amerinational. We note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Amerinational has not submitted comments explaining why its information should be withheld from disclosure. Thus, Amerinational has not demonstrated that any of its information is proprietary for purposes of the Act. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the board may not withhold any of the submitted information on the basis of the proprietary interests of Amerinational. As no additional exceptions are claimed for the proposal submitted by Amerinational, it must be released to the requestor.

In summary, the submitted information that was at issue in Open Records Letter No. 2007-03108 (2007) must be withheld or released in accordance with that ruling. The remaining submitted information must be released to the requestor.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/eeg

Ref: ID# 275471

Enc. Submitted documents

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