



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2007

Mr. David Swope
Assistant County Attorney
Harris County Attorneys Office
1019 Congress 15th Floor
Houston, Texas 77002

OR2007-04355

Dear Mr. Swope:

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# 276306.

The Harris County Purchasing Agent (the "county") received a request for copies of all proposals submitted by bidders associated with RFP # 06-0355. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Furthermore, you indicate that the submitted information may be subject to third party proprietary interests. Pursuant to section 552.305 of the Government Code, you have notified Allied Imaging Group, LLC ("Allied"), Brown's River Bindery, Inc. ("Brown's"), and Joseph J. Marotti Co., Inc. ("Marotti") of the request and of each company's right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* 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 under the Act in certain circumstances). Allied, Brown's, and Marotti each object to the release of the requested information, but Allied and Marotti raise no exceptions to disclosure.¹ We have considered the arguments and reviewed the submitted information.

¹You have forwarded to this office correspondence from Allied, Brown's, and Marotti requesting that the submitted information not be released. We will treat that correspondence as a response under section 552.305 of the Government Code. *See* Gov't Code § 552.305; *see also* Open Records Decision No. 542 (1990).

Initially, you inform us that a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-03980 (2007) on April 10, 2007. You do not indicate that there has been any change in the law, facts, or circumstances on which this prior ruling was based. We therefore conclude that the county must continue to rely on our decision in Open Records Letter No. 2007-03980 with respect to the information that was subject to that ruling.² See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001) (setting forth the four criteria for a "previous determination").³

Next, we understand the county and Brown's to claim that portions of the submitted information are excepted from disclosure under 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. Gov't Code § 552.110(b); see also *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

After reviewing the information at issue and the submitted arguments, we conclude that Brown's has made only conclusory allegations that release of the information at issue would cause the company substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. In addition, we find that the county does not provide any arguments explaining the applicability of section 552.110. Thus, none of the submitted information may be withheld pursuant to section 552.110 of the Government Code.

Next, we address the county's assertion that some of the information may be trademark protected and thus excepted from required disclosure under section 552.101 of the Government Code.⁴ A trademark is defined as "any word, name, symbol, or device, or any

²The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

³As we are able to make this determination, we need not address the county's arguments against disclosure of this information.

⁴Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

combination thereof . . . used by a person, or . . . which a person has a bona fide intention to use in commerce . . . to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown." 15 U.S.C.A. § 1127. Thus, a trademark pertains to the public use of information by a business enterprise to distinguish its goods or services from those of its competitors. The mere fact that information contains a trademark does not make the information confidential. Furthermore, you do not specify any particular provision of the "U.S. Patent and Trademark laws," nor are we aware of any provision, that makes the information confidential. Accordingly, even if any of the information at issue is trademarked, it is not protected from disclosure under section 552.101. *See generally* Open Records Decision Nos. 478 (1987), 465 (1987) (stating that statute must explicitly require confidentiality; confidentiality will not be inferred).

Finally, the county asserts that some of the information at issue may be excepted from disclosure under section 552.101 of the Government Code in conjunction with federal copyright law. We note that federal copyright law does not make information confidential for purposes of section 552.101. *See* Open Records Decision No. 660 at 5 (1999). However, a custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

We note that the remaining information contains insurance policy numbers. Section 552.136 of the Government Code states that "[n]otwithstanding 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 county must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the county must continue to rely on our decision in Open Records Letter No. 2007-03980 with respect to the information that was subject to that ruling. The county must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor in accordance with applicable copyright laws for any information protected by copyright.

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/jb

Ref: ID# 276306

Enc. Submitted documents

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