



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2007

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2007-10132

Dear Ms. Reingold:

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# 287337.

The Galveston County Treasurer's Office (the "treasurer") received a request for all proposals submitted for the county's depository contract. Although you believe that some of the requested information may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code, you take no position with respect to the applicability of those exceptions. Instead, you notified nine third parties that submitted proposals of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ We received correspondence from Wells Fargo Bank N.A. ("Wells Fargo"). We have considered Wells Fargo's arguments and have reviewed the information you submitted.

We first note, and you acknowledge, that the treasurer did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures

¹See 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 a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state any exceptions it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

Thus, because the treasurer did not request this decision within his ten-business-day deadline under section 552.301(b), the submitted information is presumed public under section 552.302.² This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, we will determine whether the treasurer must withhold any of the submitted information to protect the interests of third parties.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Amegy Bank, N.A.; Bank of America; JPMorgan Chase Bank, N.A.; Moody National Bank; Prosperity Bank; Texas First Bank – Galveston; Texas First Bank – Santa Fe; or Texas First Bank – Texas City. Therefore, because none of the listed parties has demonstrated that any of the submitted information is confidential or proprietary for the purposes of the Act, the treasurer may not withhold any of those parties' information under section 552.101 or section 552.110. *See* Gov't Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address Wells Fargo's claim under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties with respect to two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision," and (2) "commercial 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(a)-(b).

We understand Wells Fargo to contend that certain portions of its proposal are protected by section 552.110(b). This aspect of section 552.110 requires a specific factual or evidentiary

²In this instance, the treasurer's respective deadlines under subsections 552.301(b) and 552.301(e) were June 13 and June 20, 2007. The treasurer's request for this decision was submitted on June 15.

showing, not conclusory or *generalized allegations*, that substantial competitive injury would likely result from release of the information at issue. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Based on Wells Fargo's arguments and our review of the information at issue, we have marked information that the treasurer must withhold under section 552.110(b). Wells Fargo has not demonstrated, however, that section 552.110(b) is applicable to any of the remaining information in its proposal, and the treasurer may not withhold any other information that relates to Wells Fargo on this basis.

We note that section 552.136 of the Government Code is applicable to some of the information in the submitted proposals.³ Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). We have marked information that the treasurer must withhold under section 552.136.

We also note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990).

In summary, the treasurer must withhold the information that we have marked under sections 552.110(b) and 552.136 of the Government Code. The rest of the submitted information must be released. Any information that is protected by copyright must be released in accordance with copyright law.

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

³Unlike other exceptions to disclosure under the Act, 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).

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).

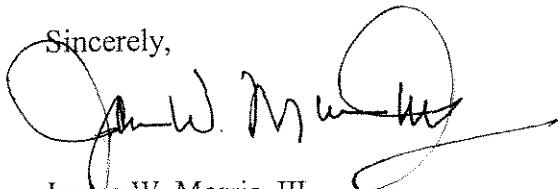
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

Ref: ID# 287337

Enc: Submitted information

c: Mr. Tom Frost, III
Frost Bank
P.O. Box 1600
San Antonio, Texas 78296-1600
(w/o enclosures)

Ms. Mary Cureau
Amegy Bank, N.A.
P.O. Box 27459
Houston, Texas 77227-7459
(w/o enclosures)

Mr. Nick London
Mr. Tim Meinardus
Bank of America
c/o Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454
(w/o enclosures)

Mr. Arthur K. Neville
JPMorgan Chase Bank, N.A.
707 Travis Street 9th Floor
Houston, Texas 77002
(w/o enclosures)

Mr. Victor Pierson
Moody National Bank
2302 Postoffice
Galveston, Texas 77550
(w/o enclosures)

Mr. Tom C. LaRue
Prosperity Bank
2424 Market Street
Galveston, Texas 77550
(w/o enclosures)

Mr. Scott Kusnerik
Texas First Bank – Galveston
P.O. Box 3399
Galveston, Texas 77552
(w/o enclosures)

Mr. Michael G. Burkhart
Texas First Bank – Santa Fe
P.O. Box 608
Santa Fe, Texas 77510
(w/o enclosures)

Ms. Catherine O. Potter
Texas First Bank – Texas City
P.O. Box 3344
Texas City, Texas 77592
(w/o enclosures)

Mr. Logan Thibodeaux
Wells Fargo Bank N.A.
9821 Broadway Suite 105
Pearland, Texas 77584
(w/o enclosures)