



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2008

Ms. Lona Chastain
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2008-06144

Dear Ms. Chastain:

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# 308427.

The Texas Workforce Commission (the "commission") received a request for the original financial statement of the Texas School of Bartending and the most recent financial statement for the school. The commission takes no position on whether the requested information is excepted from disclosure, but states that release of this information may implicate the proprietary interests of the Texas School of Bartenders (the "school"). Accordingly, you inform us, and provide documentation showing, that you notified the school of the request and of its right to submit arguments to this office as to why its information should not be released. The school asserts that the submitted information is excepted under section 552.110 of the Government Code. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the school's arguments and reviewed the submitted information.

Initially, the school asserts that the request for information is overly broad because it asks for information on the "Texas School of Bartending," not the "Texas School of Bartenders." We note that a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this case, the commission has reviewed its records and has determined that the submitted documents are responsive to the request. Accordingly, we will address the applicability of the school's claimed exception to the submitted information.

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. *Id.*; see also *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

The school asserts that eight specific categories of information contained in the financial statements and attachments are excepted under section 552.110(b) of the Government Code. We note that the submitted financial statements and attachments do not contain any information that applies to the first seven categories of information the school seeks to have withheld from disclosure. Thus, none of the information may be withheld pursuant to section 552.110(b) based on the school's arguments for categories one through seven. The school also argues to withhold category eight, the school's "disclosed liabilities...that would give [its] competitors an understanding of the costs of entering new markets or acquiring competing businesses." After reviewing, we have found that a very small portion of the information pertains to liabilities accrued during the course of acquiring new businesses. Although the school seeks to withhold this information, it provides no arguments explaining how the release of this information would cause substantial competitive harm to the school. Accordingly, the school has failed to demonstrate the applicability of section 552.110(b) of the Government Code to any of the submitted information. As no further exceptions against the disclosure of the submitted information are raised, the submitted information must be released.¹

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

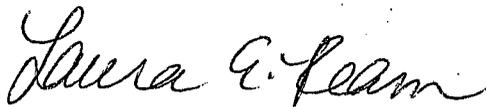
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 308427

Enc. Submitted documents

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