



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2009

Ms. Katherine R. Fite  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2009-01479A

Dear Ms. Fite:

You ask this office to reconsider Open Records Letter No. 2009-01479 (2009). Your request was assigned ID# 340840.

This office issued Open Records Letter No. 2009-01479 (2009) on February 4, 2009. At that time, our office had not received any third party briefs concerning the information that was at issue. Subsequent to our issuance of that ruling, you informed this office that a third party brief was submitted for this office to review concerning the request at issue in that ruling. You have produced evidence that the brief was timely submitted and ask this office to correct Open Records Letter No. 2009-01479. We have considered your request and will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on February 4, 2009. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 340840.

The Office of the Governor (the "governor") received a request for "any e-mail or regular mail correspondence between Washington Mutual and the administrators of the Texas Enterprise Fund since Jan. 1, 2008." You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under

section 552.110 of the Government Code.<sup>1</sup> You also state you have notified Washington Mutual of the governor's receipt of the request for information and its right to submit arguments to this office as to why the information should not be released to the requestor. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Washington Mutual. We have considered the submitted arguments and reviewed the submitted information.

The governor asserts that the submitted information is confidential because it is marked confidential and it was obtained from Washington Mutual with the assurance that it would remain confidential. However, information is not made confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied 430 U.S. 931 (1977); see also Open Records Decision Nos. 479 (1987) (information is not confidential under Public Information Act simply because party submitting it anticipates or requests that it be kept confidential), 203 (1978) (mere expectation of confidentiality by individual supplying information does not properly invoke section 552.110). Consequently, the submitted information may not be withheld unless it falls within an exception to disclosure.

Washington Mutual seeks to withhold the dollar amounts of the "Average of Gross Compensation" in the submitted documents entitled "Schedule of Job Title Listing" that are attachments to letters dated January 31, 2008 and February 8, 2008, respectively, under section 552.110(b) of the Government Code. 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. Gov't Code § 552.110(b); see also 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).

Upon review, we find that Washington Mutual has established that the dollar amounts of the "Average of Gross Compensation," which we have marked, constitute commercial or financial information, the release of which would cause Washington Mutual substantial competitive injury. Therefore, the governor must withhold the information we have marked

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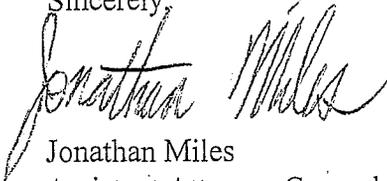
<sup>1</sup>Although you have raised sections 552.101 through 552.147 of the Government Code, you have not submitted arguments, other than under section 552.110, explaining the applicability of the claimed exceptions. Therefore, we presume you have withdrawn any exceptions other than section 552.110. See Gov't Code §§ 552.301, .302.

in the submitted information under section 552.110(b). As our ruling is dispositive, we need not address Washington Mutual's remaining arguments against disclosure. The remaining submitted information must be released to the requestor.

~~This letter ruling is limited to the particular information 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 information or any other circumstances.~~

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/eeg

Ref: ID# 340840

Enc. Submitted documents

c: Requestor  
(w/o enclosures)