



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2009

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

OR2009-06144

Dear Ms. Fite:

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# 343408.

The Office of the Governor (the "governor") received a request for compliance verification information relating to four specified companies. You state that you do not maintain responsive information pertaining to two of the four specified companies.¹ You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code.² You also state that release of the submitted information may implicate the proprietary interests of two third parties, KLN Steel Products Company, LLC ("KLN") and Authentix, Inc. ("Authentix"). Accordingly, you state you notified these companies of the request and of each company's opportunity to submit comments to this office as to why its requested information should not be released to the requestor. *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 the applicability of exception to disclosure under the Act in certain circumstances). We have considered your arguments and comments received from KLN and Authentix, and we have reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²Although you initially raised every other exception under the Act, you have not submitted arguments explaining how any of these exceptions apply to the submitted information. Therefore, we presume that you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302.

KLN and Authentix both assert that their information is subject to section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999).

In this instance, KLN argues that its submitted list is subject to section 552.110(b). KLN explains that this list was submitted to the governor for compliance purposes and that release of the list in question would cause it substantial competitive harm, as competitors could use this list to determine KLN’s pricing information. Based on KLN’s representations, we agree the submitted list must be withheld in its entirety under section 552.110(b).³ Authentix explains that release of two specified slides within its compliance documents would cause it competitive harm, as these slides specify Authentix customers. Based on these representations, we agree that the governor must withhold slides 16 and 17 from Authentix’ proposal. As no other arguments are made by KLN or Authentix, the remaining information at issue must be released.

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, 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/egg

³As our ruling is dispositive, we need not address KLN’s remaining argument against disclosure.

Ref: ID# 343408

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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