



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2009

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

OR2009-08319A

Dear Ms. Fite:

This office issued Open Records Letter No. 2009-08319 (2009) on June 16, 2009. We have examined this ruling and determined that Open Records Letter No. 2009-08319 is incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2009-08319. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

The Office of the Governor (the "governor") received a request for all Texas Enterprise Fund (the "TEF") annual progress reports for 2008 for entities awarded a grant from the fund and copies of the annual progress reports for 2007 for two specified entities. You state you are releasing some of the requested information.¹ You claim that the remaining submitted information is excepted from disclosure under sections 552.104 and 552.110 of the

¹You inform us that the requestor has agreed to exclude certain information regarding East Texas Lee Container, Maxim Integrated Products, Rockwell Collins Inc., and the Board of Regents of the University of Texas System. You state that you are withdrawing your request for a ruling with respect to the remaining responsive information of these third parties because you have released it to the requestor. Accordingly, this ruling does not address the information of East Texas Lee Container, Maxim Integrated Products, Rockwell Collins Inc., and the Board of Regents of the University of Texas System.

Government Code. You also indicate that the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you have notified the third parties of the governor's receipt of the request for information and of their right to submit arguments to this office as to why the information should not be released to the requestor.² *See id.* § 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 correspondence from representatives of nineteen third parties. We have considered the submitted arguments and reviewed the submitted information.³

Initially, you inform us that Exhibit CC is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the governor is not required to release that information in response to the request.

Next, you state that some of the responsive information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-01479A (2009), 2009-06107 (2009) and 2009-06144 (2009). In Open Records Letter No. 2009-01479A, we ruled that the governor must withhold the portions of Washington Mutual's information we marked under section 552.110(b) of the Government Code and release the remaining information. In Open Records Letter No. 2009-06107, we ruled that the governor must release Countrywide Home Loan's ("Countrywide") information. In Open Records Letter No. 2009-06144, we determined the governor must withhold KLN Steel Products Company, LLC's information and slides 16 and 17 from Authentix, Inc.'s information pursuant to section 552.110(b) of the Government Code. You state that Exhibits D and O and portions of Exhibits H and JJ contain the exact same information we ruled upon in those previous decisions. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the governor must continue to rely on those rulings as previous determinations and withhold or release the information we previously ruled upon in accordance with Open

²The third parties are as follows: ADP, Allied Production Solutions LP, Alloy Polymers Inc., Authentix, Cabela's Retail TX LP, Citgo Petroleum Corporation, Comerica Bank, Countrywide Home Loans, Fidelity Global Brokerage, Heliolt Corporation, Hilmar Cheese Company, Huntsman, Ineos Olefins & Polymers USA, JTEKT Automotive Texas L.P., KLN Steel Products Company, Motiva Enterprises LLC, Newly Weds Foods, Rackspace US Inc., Raytheon Company, Ruiz Food Products Inc., Samsung Austin Semiconductor, Sanderson Farms Inc., Scott & White, Superior Essex Communications LP, T-Mobile USA Inc., Texas Energy Center, Texas Institute for Genomic Medicine, Torchmark Corporation, Trace Engines LP, Tyson Foods Inc., Vought Aircraft Industries Inc., and Washington Mutual.

³Although the governor, Countrywide, and Ruiz raise other exceptions to disclosure, they have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we do not address these exceptions. Gov't Code § 552.301(e)(1)(A).

Records Letter Nos. 2009-01479A, 2009-06107, and 2009-06144.⁴ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address the submitted arguments for the remaining information not subject to the previous determinations.

Next, you acknowledge that the governor failed to meet the deadlines prescribed by section 552.301(e) of the Government Code in submitting Exhibit CC.1 beyond the fifteen day deadline. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that 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). Section 552.104 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with section 552.301, the governor has waived its argument under section 552.104 with regard to Exhibit CC.1 and may not withhold Exhibit CC.1 under that exception. The third party at issue, Texas Energy Center ("TXEC"), raises section 552.110 of the Government Code, which protects third party interests and can provide a compelling reason for non-disclosure under section 552.302. Therefore, we will consider TXEC's argument under section 552.110 for Exhibit CC.1. We will also consider the submitted arguments for the remaining timely submitted Exhibits.

We also address your acknowledgment that the governor previously released a portion of Exhibit H, consisting of a letter dated January 29, 2008, and its attachment, to another requestor. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). As

⁴As our ruling is dispositive with respect to this information, we need not address the remaining arguments for this information.

discussed above, the governor's claim under section 552.104 of the Government Code is discretionary. Thus, because the governor has previously released the information at issue, it has waived its claim under section 552.104. However, Countrywide contends that the information at issue is confidential under sections 552.101, 552.102, and 552.110 of the Government Code. Accordingly, because sections 552.101 and 552.102 are confidentiality provisions and third party interests are at stake, we will consider Countrywide's arguments for the portions of Exhibit H that were previously released, as well as for its remaining information at issue.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have only received arguments from Allied Production Solutions, LP ("Allied"), Comerica Bank ("Comerica"), Countrywide, Fidelity Global Brokerage Group, Inc. ("Fidelity"), Hilmar Cheese Company ("Hilmar"), JTEKT Automotive Texas LP ("JTEKT"), Newly Weds Foods, Inc. ("Newly Weds"), Rackspace US Inc. ("Rackspace"), Raytheon Company ("Raytheon"), Ruiz Food Products Inc. ("Ruiz"), Superior Essex Communications LP ("Superior Essex"), T-Mobile USA Inc. ("T-Mobile"), Torchmark Corp. ("Torchmark"), TXEC, Vought Aircraft Industries Inc. ("Vought") and Washington Mutual explaining why their information should not be released. Therefore, we find that none of the other interested parties have demonstrated that any of their submitted information is confidential or proprietary for purposes of the Act. See *id.* §§ 552.101, .110; Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, we have no basis for concluding that any portion of the other interested parties' information constitutes the proprietary information of these companies. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (party must establish *prima facie* case that information is trade secret), 542 at 3. However, we will address the governor's claims with respect to this information.

The governor and several of the third parties assert that a portion of the submitted information may not be disclosed because the information at issue has been made confidential by agreement or assurances. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."); 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110).

Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

The governor and several of the third parties raise section 552.104 of the Government Code. Since, as we have discussed above, section 552.104 only protects the interests of a governmental body and does not protect the interests of third parties, we will not consider the various third parties' claims under section 552.104. *See* Open Records Decision No. 592 at 8 (1991). However, because section 552.104 is potentially the most encompassing exception raised, we will now address the governor's claim under section 552.104 of the Government Code for the timely submitted Exhibits, excluding the information in Exhibit H that was previously released by the governor. Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The protections of section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. *See* Open Records Decision No. 541 (1990). The other purpose is to protect the legitimate marketplace interests of a governmental body when acting as a competitor in the marketplace. *See* Open Records Decision No. 593 (1991). In both instances, the governmental body must demonstrate actual or potential harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2, 463, 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See* ORD 593 at 2. Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* ORD 541.

In this case, we find you have not established that the governor has specific marketplace interests with respect to the annual progress reports of companies that have received funds from the TEF. We therefore find the information at issue is not excepted under section 552.104 on that basis. Furthermore, we note that at the time the governor received the present request, the third parties at issue had already been selected and had received funds from the TEF. Thus, we find that there was not a competitive situation pertinent to the records at issue occurring at the time of the request, and we determine that the governor may not withhold any of the information at issue under section 552.104 of the Government Code.

Next, we note that by letter dated April 10, 2009, Tyson Foods, Inc. has informed this office that it does not object to the release of its information. Therefore, this information must be released to the requestor.

The governor, Comerica, Countrywide, Fidelity, Hilmar, JTEKT, Newly Weds, Rackspace, Raytheon, Ruiz, Superior Essex, T-Mobile, Torchmark, TXEC, Vought, and Washington Mutual all contend that portions of their information at issue are excepted under section 552.110 of the Government Code. As discussed above, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we will only address the briefing third parties' arguments under section 552.110.

Section 552.110 protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b).

Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552 at 2. Section 757 provides that a trade secret is:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.⁵ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude that section 552.110(a) is applicable

⁵The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

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 Open Records Decision No. 661 (1999) at 5-6.

Countrywide, Fidelity, and Ruiz all contend that their information consists of trade secrets excepted under section 552.110(a). Having considered Countrywide’s, Fidelity’s, and Ruiz’s claims, we conclude that they have failed to demonstrate that any portion of their respective information fits within the definition of a trade secret. Countrywide, Fidelity, and Ruiz have also not sufficiently established any of the trade secret factors with respect to their information at issue. Thus, no portion of Countrywide’s, Fidelity’s, and Ruiz’s information at issue may be withheld under section 552.110(a) of the Government Code.

Countrywide, Fidelity, Hilmar, JTEKT, Newly Weds, Rackspace, Raytheon, Ruiz, Superior Essex, T-Mobile, Torchmark, TXEC, Vought, and Washington Mutual all contend that their information at issue is excepted under section 552.110(b). Among other things, some of these third parties argue the release of their information would harm the governor’s ability to obtain annual compliance reporting from companies participating in the TEF. In advancing their arguments, these third parties appear to rely on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). See also *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C. Cir. 1992) (commercial information exempt from disclosure if it is voluntarily submitted to government and is of a kind that provider would not customarily make available to public). Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. See *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard to be applied and requires a specific factual demonstration the release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. See ORD 661 at 5-6 (discussing enactment of section 552.110(b) by Seventy-sixth Legislature). The ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, we will consider only the third parties’ interests in their information.

Upon review of the arguments of Countrywide, Newly Weds, Superior Essex, and Vought and the information at issue, we find that these companies have made only conclusory allegations that the release of their information at issue would result in substantial damage to their competitive position. Thus, Countrywide, Newly Weds, Superior Essex, and Vought have not demonstrated that substantial competitive injury would result from the release of their information at issue. *See id.* Accordingly, no portion of these companies' information at issue may be withheld under section 552.110(b).

Upon review of the arguments and information at issue, we find that Comerica, Fidelity, Hilmar, JTEKT, Rackspace, Raytheon, Ruiz, T-Mobile, Torchmark, and Washington Mutual have established that the portions of their information revealing the average or actual salaries for specific job descriptions or individuals, which we have marked, constitute commercial or financial information, the release of which would cause these companies substantial competitive injury. We also find that Hilmar has established that the list of its suppliers, which we have marked, would cause Hilmar substantial competitive injury. In addition, upon review of TXEC's arguments and its information, we find that TXEC has established that a portion of its information, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. However, we find that Comerica, Fidelity, Hilmar, Rackspace, Raytheon, Ruiz, T-Mobile, Torchmark, and TXEC have not demonstrated that substantial competitive injury would result from the release of their remaining information at issue. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the governor must only withhold the information we have marked in Comerica's, Fidelity's, Hilmar's, JTEKT's, Rackspace's, Raytheon's, Ruiz's, T-Mobile's, Torchmark's, TXEC's, and Washington Mutual's information under section 552.110(b).⁶

Countrywide, Fidelity, Rackspace, Superior Essex, and Torchmark also raise section 552.102 of the Government Code for portions of their information. Section 552.102 of the Government Code exempts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). This office has found that section 552.102 only applies to information in a personnel file of an employee of a governmental body. The information the third parties at issue seek to withhold is not contained in the personnel file of a governmental body employee. Therefore, we determine that section 552.102 does not apply to these companies' information.

Allied, Comerica, Hilmar, Rackspace, Superior Essex and, we understand, Fidelity and Torchmark claim that some of their remaining information at issue is confidential pursuant

⁶As our ruling is dispositive for the information we have marked under section 552.110(b), we need not address some of the third parties' remaining arguments against the disclosure of this information.

to section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. See Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Allied, Comerica, Hilmar, Rackspace, Superior Essex, Fidelity and Torchmark contend that the salary information of their employees in their respective information is personal financial information that is confidential under common-law privacy. However, some of the remaining information at issue does not identify any particular individual. Instead, it lists salaries by job position or employee number. This information does not implicate any individual's privacy interest and may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, some of the salary information of identified individuals is being withheld under section 552.110. Thus, none of these companies' remaining information reveals any personal financial information of individuals that needs to be protected under privacy. Upon review, however, we note that some of the remaining information does contain personal financial information of identified individuals that we find is intimate and embarrassing and of no legitimate public interest. Accordingly, the governor must withhold the information we have marked in the remaining information under section 552.101 in conjunction with common-law privacy.

Countrywide claims a portion of its information at issue is excepted under section 552.101, but has not directed our attention to any law under which any of the submitted information is considered to be confidential for the purposes of section 552.101. See Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). We therefore conclude that the governor may not withhold any of Countrywide's information under section 552.101 of the Government Code.

Next, we address Torchmark's and Vought's contention that their information at issue is excepted from disclosure by section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

- (1) a trade secret of the business prospect; or
- (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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131. Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "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." *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). Torchmark and Vought have failed to explain how their information relates to economic development negotiations involving their respective companies and the state. *See id.* § 552.131. Accordingly, we conclude that the governor may not withhold any portion of their information pursuant to section 552.131(a) of the Government Code. Furthermore, we note that section 552.131(b) is designed to protect the interest of governmental bodies, not third parties. As the governor does not assert section 552.131(b) as an exception to disclosure, we conclude that no portion of the submitted information is excepted under section 552.131(b) of the Government Code.

We note that some of the remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code.⁷ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release, or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137 (a)-(c). We have marked the e-mail addresses in the remaining information that are not of a type specifically excluded by subsection (c). Accordingly, the governor must

⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.

Allied claims that a portion of the submitted information is subject to section 552.147 of the Government Code. This section provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the governor may withhold the submitted social security numbers under section 552.147 of the Government Code.⁸

Finally, we note that some of the remaining information appears to be protected by copyright. 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. 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).

In summary, the governor must continue to rely to Open Records Letter Nos. 2009-01479A, 2009-06107, and 2009-06144 and withhold or release the same information in accordance with those rulings. The governor must withhold the information we have marked under section 552.110(b) of the Government Code. The governor must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The governor must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. Social security numbers may be withheld under section 552.147 of the Government Code. The remaining information must be released to the requestor in accordance with copyright law.

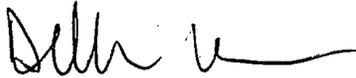
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁸We note that section 552.147(b) 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. Gov’t Code § 552.147.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/dls

Ref: ID# 353402

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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