



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2010

Ms. Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2010-03257

Dear Ms. Hobbs:

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# 376683 (OCCC File #: OR-10-090).

The Office of Consumer Credit Commissioner (the "commissioner") received a request for a list of auto dealer document fees reviewed by the commissioner to include dealer names, dealer addresses, and the maximum document fees submitted to the commissioner.¹ You state you have released the dealer names and addresses to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.110 of the Government Code. You also state the submitted information may contain the proprietary information of third parties subject to exception under the Act. Accordingly, you state, and provide documentation showing, that you have notified the interested third parties (the "third parties") of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.² *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 several

¹We note the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We note that, pursuant to section 552.305, the commissioner notified the 1,260 motor vehicle dealers that submitted documentary fee requests to the commissioner.

of the third parties and from the Texas Automobile Dealers Association (“TADA”), who submits arguments on behalf of all of the third parties. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the commissioner informs us that a portion of the submitted information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2010-00340 (2010). In that ruling, we determined, in part, the commissioner must withhold the information we marked under section 552.110 of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the commissioner must rely on Open Records Letter No. 2010-00340 as a previous determination and continue to withhold the identical information previously ruled upon in accordance with that ruling.³ 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). We will, however, consider the arguments for the remaining information at issue that was not addressed in the previous ruling.

Next, we address the commissioner’s, TADA’s, and the third parties’ arguments under section 552.110 of the Government Code. Although the commissioner argues the submitted information is excepted from disclosure under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we will only address TADA’s and the third parties’ arguments under section 552.110. TADA and the third parties claim the submitted information is excepted from disclosure 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. *Id.* § 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 the third parties and TADA have established that the remaining information at issue constitutes commercial and financial information, the release of which would cause the companies substantial competitive harm. Accordingly, the commissioner must withhold the

³As our ruling is dispositive for this information, we need not address the arguments against its disclosure.

remaining information at issue under section 552.110(b) of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
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Open Records Division

SEC/eeg

Ref: ID# 376683

Enc. Submitted documents

c: Requestor
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