ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2010

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-09417

Dear Ms. Soucy:

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# 384350 (Comptroller ID#s 6274083807, 6274557588, 627456170, 6276266231, 6278350208, 6278350930, 628117537, 6285262370, 6294207108, and 6333888214, 6386977271).

The Texas Comptroller of Public Accounts (the "comptroller") received eleven requests from ten different requestors for information pertaining to the Texas Trade Up Appliance Rebate Program (the "rebate program"). You state the comptroller has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.116, 552.136, 552.137, and 552.139 of the Government Code. In addition, you state that release of some of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.[1] *See* Gov't Code § 552.305(d); *see also* Open Records

[1]The interested third parties are: the Davis Group, Inc. ("Davis"); Helgeson Enterprises, Inc. ("Helgeson"); KW Thompson and Associates d/b/a Thompson Marketing ("Thompson"); Lincoln Media Services, Inc. ("Lincoln"); Morris and Carmen, Inc. d/b/a MQ&C Advertising ("MQ&C"); Incentium, L.L.C., ("Incentium"); Parago Promotion Services, Inc. ("Parago"); Solutran, Inc. ("Solutran"); Tuerff-Davis Enviromedia, Inc. d/b/a Enviromedia Social Marketing ("Enviromedia"); the Ward Group ("Ward"); and the Young America Corporation ("Young America").

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). You also state you have notified the United States Department of Energy (the "DOE"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from Ward. We have considered the submitted arguments and reviewed the submitted information, portions of which consists of representative samples.[2]

Initially, 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 letter, this office has not received comments from Davis; Helgeson; Thompson; Lincoln; MQ&C; Incentium; Parago; Solutran; Enviromedia; or Young America explaining why each third party's submitted information should not be released. Therefore, we have no basis to conclude that these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (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 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the comptroller may not withhold any portion of the submitted information based upon the proprietary interests of Davis; Helgeson; Thompson; Lincoln; MQ&C; Incentium; Parago; Solutran; Enviromedia; or Young America.

We first address the comptroller's argument under section 552.103 of the Government Code, as it is potentially the most encompassing. Section 552.103 provides in relevant part as follows:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
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[2]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the department received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish litigation is reasonably anticipated for the purposes of section 552.103, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.[3] *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect litigation is "realistically contemplated." *See* ORD 518 at 5; *see also* Attorney General Opinion MW-575 (1982) (finding investigatory file may be withheld if governmental body attorney determines it should be withheld pursuant to section 552.103 and litigation is "reasonably likely to result"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You assert that, with the exception of the information Helgeson has seen or accessed, the submitted information is subject to section 552.103. You claim the comptroller anticipated

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[3]In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

litigation in which it would be the plaintiff on or before the dates the requests for information were received. You explain Helgeson was contracted by the comptroller to administer the rebate program. You state the contract, which you have provided to his office, requires Helgeson to administer the rebate program and reach certain performance standards. You explain, and have submitted documents showing, the comptroller is not satisfied with Helgeson's performance under the contract and is requiring Helgeson to provide information so the comptroller "may determine whether Helgeson is meeting the requirements of the [c]ontract." You argue "an agency can be trying to avoid litigation while still having a reasonable anticipation of litigation." You indicate, and the submitted documents reflect, that the comptroller anticipates litigation against Helgeson pertaining to its contractual performance. You explain the submitted information is related to the anticipated litigation because it pertains directly to the administration of the rebate program. Based on your representations and our review, we find the comptroller reasonably anticipated litigation on the dates the comptroller received the requests for information. Further, we agree that the information at issue relates to the anticipated litigation. Accordingly, we find that the comptroller may withhold the information at issue under section 552.103.

We note, and you acknowledge, that once the submitted information has been obtained by the potential opposing party to the anticipated litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). You state the comptroller does not seek to withhold under section 552.103 the information Helgeson has seen or accessed. We note you have indicated the information Helgeson has seen or accessed. Accordingly, with the exception of the information Helgeson has seen or accessed, the comptroller may withhold the submitted information under section 552.103 of the Government Code.[4] We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We will now address your arguments against disclosure of the information Helgeson has seen or accessed.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client

[4]As our ruling is dispositive for this information, we need not address your remaining arguments under sections 552.107, 552.111, 552.116, 552.137, or 552.139 of the Government Code for this information.

privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege, unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you have marked in the remaining information consists of confidential communications between comptroller employees, comptroller attorneys, and Helgeson, the comptroller's contractor, for the purpose of facilitating the rendition of professional legal services to the comptroller. You further explain that the marked information was intended to be confidential and has not been disclosed to persons other than those to whom disclosure was made in furtherance of the rendition of legal services. You have identified the parties to the communications. Based on your representations and our review of the submitted documents, we find that the information you have marked consists of privileged attorney-client communications that the comptroller may withhold under section 552.107(1) of the Government Code.[5]

You state the information you have marked in the remaining information is excepted from public disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and

[5]As our ruling on this information is dispositive, we need not address your arguments under section 552.111 for this information.

recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Moreover, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

You state the information you have marked constitutes advice, opinions, and recommendations that reflect deliberative or policymaking processes of the comptroller. However, upon review, we find that the information you have marked consists of information that is either purely factual or administrative in nature. Thus, you have failed to demonstrate, and the information does not reflect on its face, that the marked information reveals advice, opinions, or recommendations of the comptroller that pertain to policymaking. Accordingly, we find none of the information you marked is excepted from disclosure under section 552.111, and it may not be withheld on that basis.

Section 552.116 provides as follows:

> (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.
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> (b) In this section:
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> > (1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.
> >
> > (2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:
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> > > (A) intra-agency and interagency communications; and
> > >
> > > (B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state the information you marked was prepared and is maintained by the comptroller as part of the working papers of an audit conducted by the comptroller. You explain this audit is authorized by the Internal Auditing Act, chapter 2102 of the Texas Government Code. *See id.* § 2102.005 (requiring state agencies to conduct internal audit programs); *see also id.* § 2102.003 (defining types of audits). Based on your representations and our review, we agree that section 552.116 of the Government Code is applicable to the marked information. We, therefore, conclude the comptroller may withhold this information pursuant to section 552.116 of the Government Code.

Section 552.136 of the Government Code provides as follows:

> (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

> instrument identifier or means of account access that alone or in conjunction with another access device may be used to:
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> (1) obtain money, goods, services, or another thing of value; or
>
> (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.
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> (b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. You seek to withhold the usernames and passwords you have marked under section 552.136. You represent that the marked usernames function as account numbers and the marked passwords function as personal identification numbers that can be used to obtain money, goods, or services. Accordingly, we find the comptroller must withhold the information you have marked under section 552.136 of the Government Code.

We note, and you acknowledge, that the information you state will be released contains an e-mail address subject to section 552.137 of the Government Code. Section 552.137 of the Government Code 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). *See id.* § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the comptroller must withhold the marked e-mail address under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.[6]

We now address Ward's arguments against disclosure of its submitted proposal. Ward claims its proposal is excepted from disclosure under section 552.101 of the Government Code. However, Ward does not present any arguments against disclosure under section 552.101 nor has Ward directed our attention to any law under which any of its proposal 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).

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[6]We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

However, we note Ward's submitted information, consisting of its bid proposal, includes tax return information. Section 552.101 also encompasses information made confidential by section 6103(a) of title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See, e.g.*, Attorney General Opinion H-1274 (1978) (tax returns). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, . . . deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Therefore, the comptroller must withhold the tax return information we marked in Ward's submitted proposal pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Ward also raises section 552.110 of the Government Code as an exception to disclosure of its remaining information. 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. Gov't Code § 552.110(a), (b). Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 552.110(a). A "trade secret"

> may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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, as, for example the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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 Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

> (1) the extent to which the information is known outside of [the company's] business;
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> (2) the extent to which it is known by employees and others involved in [the company's] business;
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> (3) the extent of measures taken by [the company] to guard the secrecy of the information;
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> (4) the value of the information to [the company] and to [its] competitors;
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> (5) the amount of effort or money expended by [the company] in developing the information; and
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> (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* ORD 232. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 2 (1990). However, we cannot conclude that section 552.110(a) is applicable 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.*; ORD 661.

Having considered Ward's arguments under section 552.110(a), we determine Ward has failed to demonstrate that any portion of its remaining information meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. We note that pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of business," rather than "a process or device for continuous use in the operation of the business." *See* RESTATEMENT OF TORTS § 757 cmt. b (1939); *Hyde Corp. v. Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3 (1982), 306 at 3 (1982). Accordingly, the comptroller may not withhold any of Ward's remaining information on the basis of section 552.110(a) of the Government Code.

Upon review of Ward's arguments under section 552.110(b), we find that Ward has made only conclusory allegations that the release of any of its remaining information would result in substantial damage to the company's competitive position. Thus, Ward has not demonstrated that substantial competitive injury would result from the release of any of its remaining information. *See* Open Records Decision Nos. 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), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). We note the bid proposal at issue was accepted and the comptroller awarded a contract to Ward. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, none of Ward's remaining information may be withheld under section 552.110(b) of the Government Code.

In summary, with the exception of the information Helgeson has seen or accessed, the comptroller may withhold the submitted information under section 552.103 of the Government Code. In the information Helgeson has seen or accessed, the comptroller may withhold the information you have marked under section 552.107 of the Government Code and section 552.116 of the Government Code. The comptroller must withhold the information you have marked under section 552.136 of the Government Code. The comptroller must withhold the marked e-mail address under section 552.137 of the Government Code, unless the comptroller receives consent for its release. The comptroller

must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The remaining information 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, toll free, at (888) 672-6787.

Sincerely,

Jennifer Luttrall

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 384350

Enc. Submitted documents

c: Requestors
(w/o enclosures)

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