



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2012

Ms. Virginia De La Vega
Upper Rio Grande Workforce Development Board
221 North Kansas, Suite 1000
El Paso, Texas 79901

OR2012-04600

Dear Ms. De La Vega:

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# 450069.

The Upper Rio Grande Workforce Development Board (the "board") received a request for account analysis statements for a specified time period. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you indicate release of the requested information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code, you were required to notify the third parties of the request and of their opportunity to submit comments to this office explaining why the requested information should be withheld from disclosure. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 applicability of exception to disclosure in certain circumstances). We have considered the claimed exception.

Initially, we must address the board's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons

why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). You state the board received the request for information on January 23, 2012. Accordingly, you were required to provide the information required by section 552.301(e) by February 13, 2012. However, as of the date of this letter, you have not submitted a copy of the specific information requested or a representative sample. Accordingly, we conclude the board failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977).

You assert the requested information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with the requirements of section 552.301, you have waived your claim under section 552.104. Accordingly, the board may not withhold any portion of the requested information under section 552.104. However, because third party interests can provide a compelling reason to withhold information, we will consider whether any of the requested information may be excepted on that basis.

Next, we note 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, we have not received comments from any third party explaining why its information should not be released. Thus, we have no basis to conclude any third party has a protected proprietary interest in the requested 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

board may not withhold any of the requested information on the basis of any proprietary interest a third party may have in the information. Therefore, the requested 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 450069

No enclosures

c: Requestor