



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2014

Ms. Elizabeth Hernandez
Counsel for the Tarrant County Community Supervision and Corrections Department
Lloyd Gosselink
816 Congress Avenue, Suite 1900
Austin, Texas 78701

OR2014-20847

Dear Ms. Hernandez:

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# 543298.

The Tarrant County Community Supervision and Corrections Department (the "department"), which you represent, received a request for (1) information related to proposals from Drager Safety Diagnostics, Inc. ("Drager") and the requestor for a specified RFP; (2) any responses submitted by Drager for ignition interlock device RFPs, including a specified RFP, during a specified time period; (3) specified fees related to ignition interlock device services during a specified time period; (4) all communications between department employees and Tarrant County (the "county") employees pertaining to ignition interlock device services; (5) all ignition interlock device RFPs issued and specified related documents during a specified time period; (6) all communications between department employees, county employees, and Drager; (7) specified documents related to the requestor or Drager; and (8) specified rules adopted by the Tarrant County Commissioner's Court.¹ You state you

¹You state the department sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

do not have information responsive to some categories of the request.² You state you have released some information to the requestor with insurance policy numbers redacted pursuant to section 552.136 of the Government Code.³ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Drager. Accordingly, you state, and provide documentation showing, you notified Drager of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *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 Drager. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2014-20016 (2014). In that ruling, we determined the department must withhold the marked information under section 552.110(b) of the Government Code and release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department may continue to rely on Open Records Letter No. 2014-20016 as a previous determination and withhold or release the information at issue, which we have marked, in accordance with that ruling.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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Drager raises section 552.101 of the Government Code for some of its information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Drager generally argues the submitted information is "confidential as a

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

³Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

⁴As our ruling is dispositive, we need not address Drager's arguments against disclosure of this information.

matter of law.” However, Drager has not pointed to any confidentiality provision, nor are we aware of any, that would make this information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the department may not withhold any of Drager’s information under section 552.101 of the Government Code.

Section 552.102(a) of the Government Code excepts 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). We understand Drager to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. Section 552.101 of the Government Code encompasses common-law privacy, which protects information if it (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). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. However, section 552.102 applies to only information in the personnel file of a governmental employee. *See Gov’t Code § 552.102(a)*. None of Drager’s information consists of information in the personnel file of a governmental employee. Therefore, we find section 552.102 of the Government Code is not applicable, and the department may not withhold any of Drager’s information on that basis.

Drager raises section 552.104 of the Government Code for portions of its information. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104. We note section 552.104 protects the interests of governmental bodies, not third parties. *See Open Records Decision No. 592 at 8 (1991)* (purpose of section 552.104 is to protect governmental body’s interest in competitive bidding situation). As the department does not argue section 552.104 is applicable, we will not consider Drager’s claims under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the department may not withhold any of the submitted information under section 552.104 of the Government Code.

Drager claims portions of its information are excepted 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.*; *see also* Open Records Decision 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).

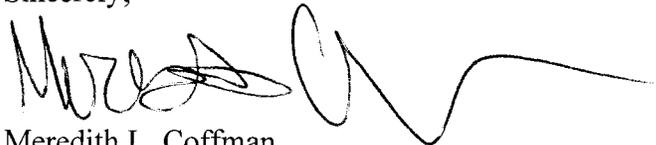
Drager contends some of its information is commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find Drager has failed to demonstrate release of the information at issue would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations. *See* Gov’t Code § 552.110(b). Therefore, the department may not withhold any of the information at issue on this basis.

In summary, the department may continue to rely on Open Records Letter No. 2014-20016 as a previous determination and withhold or release the information at issue, which we have marked, in accordance with that ruling. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/eb

Ref: ID# 543298

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Bonnie Chong
Senior Corporate Counsel
Drager
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Telford, Pennsylvania 18969
(w/o enclosures)