



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 3, 1998

Mr. Tracy Pounders  
Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR98-0568

Dear Mr. Pounders:

You have asked if certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113174.

The City of Dallas (the "city") received a request for a tape recording of a public meeting, an application from Classic Shuttle Corporation ("Classic"), and a purchase agreement entered into between Classic and Samuel Aregraw. As provided by section 552.305 of the Open Records Act, you seek a decision from this office as to whether the purchase contract is excepted from disclosure.<sup>1</sup>

This office notified Classic of the request and provided an opportunity for Classic to explain why the purchase contract should be withheld from disclosure. *See* Gov't Code § 552.305. Classic argues that the purchase contract is commercial or financial information that is protected from disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of third parties by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the commercial or financial information prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court

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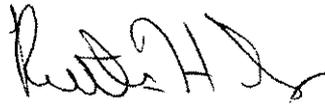
<sup>1</sup>Since you raise no objections to releasing the requested tape recording or the application, we assume that this information has already been provided to the requestor. Thus, this ruling addresses only the contract that was submitted to this office.

concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770. A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 (1996) at 4. To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.*

We agree that Classic has demonstrated the applicability of section 552.110 by its arguments, which show that Classic faces actual competition and that disclosing the purchase contract would likely cause substantial harm to Classic's competitive position.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 113174

Enclosures: Submitted Documents

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