

January 14, 1999

Mr. Charles M. Allen, II
Legal Advisor
Richardson Police Department
City of Richardson
P. O. Box 831078
Richardson, Texas 75083-1078

OR99-0101

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121024.

The Richardson Police Department (the "department") received a request for "the full investigative report" concerning a specified automobile accident, which resulted in a fatality.¹ In response to the request, you submit to this office for review a copy of the information at issue. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception and arguments you have raised and reviewed the submitted information.²

Section 552.108, the "law enforcement" exception, provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

¹It appears that the original request for information was received on June 23, 1998 by the department, which in turn requested a ruling from our office on July 6, 1998. However, due to a subsequent letter, dated September 9, 1998, from Mr. Allen, the department's legal advisor, clarifying an earlier typographical error, our office closed the request for a decision based on his letter which stated "[p]lease withdraw the application for an Attorney General's Opinion in this matter." Based on Mr. Allen's follow-up letter of October 7, 1998, we have corrected for the misunderstanding and re-instated the request for a decision. We apologize for our part in delaying the resolution of this matter.

²You have also submitted to this office information that apparently was sent for informational purposes only, some of which you indicate has been released to the requestor. See Transp. Code § 550.064 (officer's accident report). In this ruling, we do not address the public disclosure of that information.



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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(1) release of the information would interfere with the detection, investigation or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You inform this office that the investigation at issue "did not result in conviction or deferred adjudication." You further state that the criminal investigation has been completed and no charges were filed. Based on your representations and submitted information, we find that you have shown the applicability of section 552.108(a)(2) to the requested information, since the investigation *did not* result in conviction or deferred adjudication. Therefore, we conclude that you may withhold most of Exhibits D and E under section 552.108(a)(2).

However, certain basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. *See* Gov't Code § 552.108(c). Section 552.108(c) provides that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Therefore, we conclude that except for basic front page information, Exhibits D and E may be withheld under section 552.108(a)(2) of the Government Code, though the department also has discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.³

³We note that some of the information in the submitted documents is also confidential by law. Therefore, if you choose to waive your right to withhold the information under

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 121024

Enclosures: Submitted documents

cc: Ms. Janet Randle
Law Offices of Janet R. Randle
14785 Preston Road, Suite 550
Dallas, Texas 75240
(w/o enclosures)

section 552.108, we urge you to exercise caution in releasing the information to the public. See Gov't Code §§ 552.352 (distribution of confidential information is criminal offense), 552.130 (confidentiality of motor vehicle operator's or driver's license); see also Open Records Decision No. 565 (1990) (information generated by Texas Crime Information Center or National Crime Information Center must not be made available except in accordance with federal regulations).

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ATTORNEY GENERAL
STATE OF TEXAS

OR99-0102

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Ms. Laurie Bouillion Larrea
President, Dallas County
Local Workforce Development Board
1201 Main Street, Suite 2700
Dallas, Texas 75202

Dear Ms. Larrea:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121077.

The Dallas County Local Workforce Development Board (the "board") received a request for the following:

1. Most recent RFP for Management of the One Stop Center and Welfare Orientation Project.
2. Copy of the current Lockheed Martin IMS contract.
3. Copy of the current Lockheed Martin's proposal which is currently under negotiation and scheduled to begin September 1, 1998.

You state that you have provided the requestor with a copy of the RFP and the current Lockheed Martin IMS ("Lockheed Martin") contract. On behalf of Lockheed Martin, you contend that portions of the requested proposal are excepted from disclosure under the Open Records Act.¹

¹You did not seek an open records decision from this office within the statutory ten-day deadline. See Gov't Code § 552.301. The board's delay in this matter results in the presumption that the requested information is public. See *id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379

Since the proprietary interests of Lockheed Martin may be implicated by the release of its proposal, we notified Lockheed Martin about the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Lockheed Martin responded by claiming that portions of its bid proposal are excepted from disclosure pursuant based on the individual right to privacy and section 552.110 of the Government Code.

Lockheed Martin's proposal includes the job qualifications and work history of several of its employees (pp. 53 and 56, and resumes in section 7). Lockheed Martin contends that this information is excepted from disclosure based on its individual employees' rights to privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. For information to be protected from disclosure by the common-law right of privacy under section 552.101, the information must be highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and the information must not be of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We do not find the professional qualifications of Lockheed Martin employees to be highly intimate and embarrassing information. *See* Open Records Decision No. 455 (1987) (qualifications of applicants for employment not protected by common-law right to privacy). Thus, we conclude that section 552.101 does not except page 53, page 56, or the resumes in section 7 from disclosure.

Section 552.110 of the Government Code 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. Lockheed Martin contends that portions of its proposal are excepted from disclosure under section 552.110 as commercial or financial information. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption

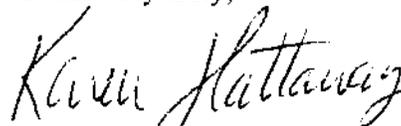
(Tex. App.--Austin 1990, no writ). To overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of sections 552.101 and 552.110 generally constitute compelling reasons for nondisclosure. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests). Therefore, we will address these claimed exceptions.

4 to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court 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. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Lockheed Martin argues that releasing portions of its proposal would cause it to suffer substantial competitive harm. A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. ORD 639 at 4 (1996). 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.*

Having reviewed Lockheed Martin's arguments, we conclude that Lockheed Martin has not provided specific factual or evidentiary material to support its claim that publicly disclosing Attachment M or the salary ranges on the job descriptions in Section 7 would cause it to suffer substantial competitive harm. We conclude that Lockheed Martin has demonstrated that publicly disclosing the following sections of its proposal would cause it to suffer substantial competitive harm: pp. 7-20, 37-39, 43, 58-59, the marked portions of pages 63-66, 76, 79-80, Section 4, Attachment I, and Attachment K. The board must withhold these sections of the proposal from disclosure under the commercial or financial information prong of section 552.110. All remaining portions of the proposal must be released.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 121077

Enclosures: Submitted documents

cc: Mr. Keith Rasimus
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Greenfield, Wisconsin 53221
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Ms. Barbara Loscalzo
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Glenpointe Center East
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