



March 18, 2002

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2002-1324

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#160078.

The Texas Department of Public Safety (the "department") received a request for copies of the Self Insurance Certificate filed by a specified company for the year 2000, as well as the financial statements, list of officers and partners, and specified attachments pertaining to the company for the years 2000 and 2001. You state that you are prepared to release all responsive information other than the requested financial statements for the year 2000. Although you claim that the release of the financial statements may implicate the proprietary interests of a third party under section 552.110 of the Government Code, you take no position as to whether the statements are so excepted. We have considered all claimed exceptions and have reviewed the submitted information.

Pursuant to section 552.305(d) of the Government Code, the department notified Enterprise Rent-A-Car ("Enterprise"), a company whose proprietary interests may be implicated by the release of the requested information, of the department's receipt of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* 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 to disclosure under Public Information Act in certain circumstances). Enterprise responded to the department's section 552.305 notice by claiming that the financial statements are excepted from disclosure pursuant to sections 552.101 and 552.110 of the Government Code.

Section 552.110(b) excepts from disclosure "[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." An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility

of commercial harm. *Cf. National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). The governmental body or interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of the requested information. *See* Open Records Decision No. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party 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).

Enterprise argues that the financial statements should be withheld from disclosure under section 552.110 because it constitutes commercial or financial information the release of which would cause substantial competitive harm to Enterprise. *See* Gov't Code § 552.110(b). Enterprise states that the release of these statements would provide its competitors with access to information regarding Enterprise's domestic and foreign operations, its new and used car inventories, the composition and value of Enterprise's property and equipment, and Enterprise's assets and liabilities. Enterprise argues that such information would allow its competitors to ascertain changes within Enterprise's business structure and understand the areas of Enterprise's focus in the marketplace. Enterprise also argues that its competitors could use such information to help develop their own business plans and to target areas of the market that Enterprise has not yet established, thereby limiting Enterprise's potential growth. Based on our review of Enterprise's arguments and the information at issue, we conclude that Enterprise has demonstrated that the release of its year 2000 financial statements would cause substantial competitive harm to Enterprise. Accordingly, we conclude that the department must withhold this information from disclosure in its entirety pursuant to section 552.110(b) of the Government Code. *See* Open Records Decision No. 639 at 4 (1996). Because we base our ruling on section 552.110 of the Government Code, we need not address Enterprise's section 552.101 claim.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

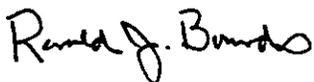
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID#160078

Enc. Submitted documents

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