



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2004

Mr. David T. Garcia
County Attorney
Brooks County
P.O. Box 557
Falfurrias, Texas 78355

OR2004-3324

Dear Mr. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200166.

Brooks County (the "county") received a request for certain information about county employee group insurance. The county takes no position with regard to the release of the responsive information. However, you state that the responsive information may contain information subject to a proprietary or property interest of Entrust, an interested third party. You notified Entrust of the request for information pursuant to section 552.305 of the Government Code. *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 Public Information Act in certain circumstances). We have considered the arguments submitted by Entrust and reviewed the submitted information.

Entrust claims that the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects the property interests of private persons by excepting from disclosure commercial 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. When raising this exception, the governmental body or interested third party must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial

competitive injury would likely result from disclosure. Gov't Code § 552.110(b); *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Additionally, we note that the release or withholding of public information may not be based on the requestor's motive or purpose in seeking access to the information. *See* Gov't Code §§ 552.221(a), .222(a), .223; Open Records Decision No. 542 at 4 (1990) (stating that statutory predecessor prohibits inquiry by governmental body into requestor's motives and requires governmental body to treat each request for information uniformly).

After reviewing Entrust's arguments and the submitted information, we conclude that while Entrust has generally alleged that release of the submitted information would cause substantial competitive harm to the company, Entrust has not made a specific factual or evidentiary showing that such harm would result from the release of the information. Therefore, we find that the company has not adequately demonstrated that the submitted information is excepted from disclosure under section 552.110(b). *See* Open Records Decision Nos. 541 at 8 (1990) (general terms of contract with governmental body are usually not excepted from disclosure); *see also* Open Records Decision Nos. 661 (1999), 319 (1982) (information relating to organization and personnel, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor); *cf.* Open Records Decision Nos. 514 (1988) (public has an interest in knowing prices charged by government contractors), 184 (1978). Consequently, the county may not withhold the submitted information pursuant to section 552.110 of the Government Code and must release it to the requestor.

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 Dep't of Pub. 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 200166

Enc. Submitted documents

c: Mr. William Rusteberg
1010 East Tyler
Harlingen, Texas 78550
(w/o enclosures)

Mr. Aaron B. Pickelner
Entrust
14701 St. Mary's Lane, Suite 150
Houston, Texas 77079
(w/o enclosures)