



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2005

Mr. Gene Snelson  
General Counsel  
Texas Animal Health Commission  
P. O. Box 12966  
Austin, Texas 78711-2966

OR2005-09352

Dear Mr. Snelson:

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# 234633.

The Texas Animal Health Commission (the "commission") received a request for the cellular telephone records of the commission's executive director for a specified time period. You state that the commission has made available some of the requested information but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.110, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the United States Department of Agriculture, an attorney representing the requestor, an attorney representing the Texas Farm Bureau (the "bureau"), and an individual member of the bureau. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

First, we address the applicability of section 552.110 of the Government Code to the phone number of the owner of the cow that tested positive last June for Bovine Spongiform Encephalopathy ("BSE"). We note that section 552.110 is an exception that protects only the interests of third parties, as distinguished from exceptions that are intended to protect the interests of governmental bodies. *See* Open Records Decision No. 319 (1982) (statutory predecessor to section 552.110 designed to protect third-party interests that have been

recognized by the courts). The commission is a governmental body responding to an open records request, not a private entity asserting third-party interests in the requested information. As such, the commission may not avail itself of section 552.110's protections. However, the bureau has also submitted arguments on behalf of its members, claiming that section 552.110 is applicable to the owner's identifying information. Because the bureau is a third party claiming an interest in this information on behalf of its members, we will address its arguments regarding this exception.

Specifically, the bureau claims that the owner's identifying information is subject to section 552.110(b) of the Government Code. This provision protects the proprietary interests of private parties 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." *See* Gov't Code § 552.110(b). Section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Here, the bureau explains that "[s]imilar to a merchant's inventory or a banker's deposits and portfolio of loans, a rancher's cattle is the core of his business. . . . Thus, information about the condition and status of a rancher's herd is commercial information for purposes of section 552.110(b)." We agree that, in this instance, the identifying information of the owner constitutes commercial information for purposes of section 552.110(b) in that it reveals not just the identity of a person or business entity, but rather reveals the condition and status of this particular owner's cattle. *Cf., e.g.,* Open Records Decision Nos. 552 (1990); 437 (1986); 306 (1982); 255 (1980) (identifying information of customers in customer lists may be withheld under predecessor to section 552.110). We also find that the bureau has demonstrated that substantial competitive harm would result from release of the identifying information. Thus, we conclude that the owner's phone number, which is identifying information of the owner, must be withheld under section 552.110(b) of the Government Code. We note that, in making the determination in this matter, the specific information at issue relates to a single past case of one cow testing positive for BSE. Other facts, scenarios, and evidence, such as facts involving many cases of BSE or a present or future outbreak, will be reviewed on a case-by-case basis. *See, e.g.,* Open Records Decision No. 514 (1988).

You also claim that the executive director's home phone number is excepted from required public disclosure. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us that

the executive director timely elected to keep this information confidential pursuant to section 552.024. Thus, the commission must withhold the executive director's home phone number pursuant to section 552.117(a)(1).

Lastly, we note that some of the remaining submitted information is subject to section 552.136 of the Government Code.<sup>1</sup> This section states that, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The commission must, therefore, withhold the cellular phone account number in accordance with section 552.136.

To summarize, the commission must: (1) withhold the phone number of the owner of the cow that tested positive for BSE pursuant to section 552.110(b) of the Government Code; (2) withhold the executive director's home phone number under section 552.117(a)(1) of the Government Code; (3) withhold the cellular phone account number in accordance with section 552.136 of the Government Code; and (4) release the remaining submitted information. As we reach these conclusions, we need not address the remaining submitted arguments against disclosure.

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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 234633

Enc. Submitted documents

c: Ms. Terri Langford  
Houston Chronicle  
801 Texas Avenue  
Houston, Texas 77002  
(w/o enclosures)

Mr. C. Robert Heath  
Bickerstaff, Heath, Smiley, Pollan, Keever  
& McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701-2443  
(w/o enclosures)

Ms. Lesia M. Banks  
Assistant Director  
United States Department of  
Agriculture  
Animal and Plant Health  
Inspection Service  
Legislative and Public Affairs  
Freedom of Information  
4700 River Road, Unit 50  
Riverdale, Maryland 20737-1232  
(w/o enclosures)

Mr. Ron DeHaven  
Administrator  
United States Department of Agriculture  
Animal and Plant Health Inspection  
Service  
Washington, D.C. 20250  
(w/o enclosures)

Mr. Joseph R. Larsen  
Ogden, Gibson, White, Broocks & Longoria, L.L.P.  
711 Louisiana, Suite 2100  
Houston, Texas 77002  
(w/o enclosures)