



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2006

Mr. Jeffrey R. Hill
Assistant General Counsel
Texas Department of Licensing and Regulation
P. O. Box 12157
Austin, Texas 78711

OR2006-13003

Dear Mr. Hill:

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# 263556.

The Texas Department of Licensing and Regulation (the "department") received a request for all information pertaining to The Eagle Warranty Corporation ("Eagle") within the last five years. You state that the requestor has allowed for the redaction of Texas motor vehicle identification numbers and personal e-mail addresses of members of the public. Accordingly, any of this information within the submitted documents is non-responsive, and this decision does not address its availability. You further state that some of the requested information has been released. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.

You also contend that release of a portion of the information may implicate Eagle's confidentiality and/or proprietary interests. Thus, pursuant to section 552.305 of the Government Code, you have notified Eagle of the request for information and its right to submit arguments to this office as to why the 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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have considered the submitted arguments and have reviewed the submitted information.

Both the department and Eagle claim that portions of the submitted information contain trade secrets as defined by section 1304.104 of the Texas Occupations Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses

information made confidential by other statutes. Section 1304.104 of the Occupations Code provides that:

Information concerning the number of service contracts sold by a provider that is submitted under Section 1304.103:

- (1) is a trade secret to which Section 552.110, Government Code, applies; and
- (2) may be used only by the executive director and the department in developing the tiered fee schedule under Section 1304.103.

Occ. Code § 1304.104.

Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: (a) trade secrets obtained from a person and privileged or confidential by statute or judicial decision; and (b) 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. Gov't Code § 552.110(a), (b).

You inform us that Eagle is a registered Service Contract Provider under Texas Occupations Code chapter 1304. Moreover, you state that Eagle submitted the information at issue pursuant to Occupations Code section 1304.103. You claim that the information you have highlighted in Exhibits 2 through 5, as well as all of the information in Exhibit 6, either directly reveals the number of service contracts sold by Eagle or reveals information which can be used to determine the number of service contracts sold by Eagle. Based upon your representations and our review, we conclude that you have adequately demonstrated that the information you have highlighted in Exhibits 2 through 5, as well as all of the information in Exhibit 6, constitutes trade secrets under section 1304.104 of the Occupations Code. Thus, the department must withhold this information pursuant to section 552.110 of the Government Code.

Eagle also argues that portions of the remaining information are protected by section 110(b) of the Government Code. Section 552.110(b) protects “[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[.]” Gov't Code § 552.110(b). This exception to disclosure 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. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

We find that Eagle has not shown, as required by section 552.110(b), that the release of any of its information would likely cause the company substantial competitive harm. Rather,

Eagle has made only conclusory allegations that release of this information will affect its proprietary interests. We therefore conclude that none of the remaining information is excepted from disclosure under section 552.110(b), and the department may not withhold any of this information on that basis. *See* Open Records Decision Nos. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing).

Eagle further raises section 552.113 of the Government Code. Section 552.113 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded that section 552.113(a)(2) only protects commercially valuable geological and geophysical information regarding the exploration or development of natural resources. Open Records Decision No. 627 at 3-4 (1994) (overruling rationale of Open Records Decision No. 504 (1988)). Eagle has not demonstrated that any of the submitted information is commercially valuable geological or geophysical information regarding the exploration or development of natural resources. Accordingly, we conclude that the department may not withhold any of the requested information pursuant to section 552.113.

We note, however, that section 552.136 of the Government Code is applicable to some of the remaining information.¹ Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

¹This office will raise section 552.136 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We have marked the bank account and routing numbers that the department must withhold under section 552.136 of the Government Code.

Finally, we note that some of the materials at issue are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, any copyrighted information may only be released in accordance with copyright law.

In summary, the department must withhold the highlighted information in Exhibits 1 through 5, as well as all of the information in Exhibit 6, under section 552.110(a) of the Government Code. The department must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. The department must release the remainder of the information to the requestor in accordance with applicable copyright law.

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, 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 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 10 calendar days of the date of this ruling.

Sincerely,



Alix K. Cornett
Assistant Attorney General
Open Records Division

AKC/krl

Ref: ID# 263556

Enc. Submitted documents

c: Mr. Ahmad Keshavarz
The Littlefield Building
106 East 6th Street, Suite 725
Austin, Texas 78701-3659
(w/o enclosures)