



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2007

Ms. Chelsea Thornton
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2007-06846

Dear Ms. Thornton:

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# 278753.

The Office of the Governor (the "governor's office") received two requests for (1) information related to the development of information systems or interfaces for the transfer of any and all Texas DPS criminal law enforcement investigative information or stored database elements or intelligence database elements, reports or information to TDEx or other shared database projects, (2) information related to the development of TDEx or other information sharing projects, including information relating to how the contracts were bid and how the bidding process was utilized, and (3) all Northrop Grumman's contracts and agreements related to TDEx, related progress reports, outcome measures and evaluations of products and services provided by Northrop Grumman. You claim that the requested information is excepted from disclosure under sections 552.110 and 552.139¹ of the Government Code.² You also indicate that the submitted information may be subject to the proprietary interest of a third party. Accordingly, you inform us that you notified Appriss, Inc. ("Appriss") of the requests and of its right to submit arguments to this office as to why its information should not be released. *See Gov't Code § 552.305(d)* (permitting interested

¹We note that although the governor's office does not timely raise section 552.139, we will consider its arguments under this section because section 552.139 can provide a compelling reason to withhold information. *See Gov't Code § § 552.301, .302.*

²Although the governor's office asserts that the submitted information is excepted under sections 552.101, 552.104, 552.106, 552.107, 552.111 and 552.131 of the Government Code, it does not submit any arguments in support of these exceptions. Therefore, we do not address these exceptions in this ruling. *See Gov't Code § § 552.301, .302.*

third party to submit to attorney general reasons why requested information should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted two responsive documents for our review. To the extent any other responsive information existed on the date the governor's office received this request, we assume you have released it. If you have not released any such information, you must do so at this time.³ See Gov't Code § 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We next note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Appriss explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the requested information constitutes proprietary information protected under section 552.110, and none of it may be withheld on the basis of Appriss' arguments. See Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

The governor's office asserts that the submitted information is excepted from disclosure under section 552.110(b). 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. *Id.* § 552.110(b); Open Records Decision No. 661 (1999). Upon review, we find that the governor's office has failed to demonstrate based on specific factual evidence how the release of the submitted information would cause substantial competitive harm to Appriss. Rather, the governor's office makes a conclusory assertion that release of the information would harm Appriss' competitive interest. Further, although the governor's office states that it has obtained this information from Appriss with the assurance that it would remain

³We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

confidential, we note that a governmental body may not withhold information based on the expectation or an agreement that it would be kept confidential. *See* Open Records Decision Nos. 479 at 1 (1987) (information is not confidential simply because the party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information is not excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted). Accordingly, no part of the submitted information may be withheld under section 552.110(b).

The governor's office also asserts section 552.139. Section 552.139 of the Government Code provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Id. § 552.139. The governor's office explains that the information at issue relates specifically to the design and operation of a computer network. Further, it informs us that the release of the submitted information would compromise the integrity and security of a computer network. Accordingly, the governor's office must withhold the marked information pursuant to section 552.139 of the Government Code.

In summary, the marked information must be withheld pursuant to section 552.139 of the Government Code. The remaining information must be released.

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).

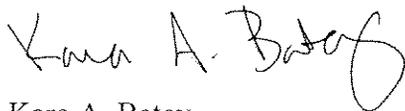
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/ma

Ref: ID# 278753

Enc. Submitted documents

c: Mr. Jake Bernstein
Executive Editor
The Texas Observer
307 West 7th Street
Austin, Texas 78701
(w/o enclosures)

Mr. Brian Oldham
Appriss, Inc.
c/o Ms. Chelsea Thornton
Office of the Governor
P.O. Box 12428
Austin, Texas 78711
(w/o enclosures)

Ms. Brandi Grissom
Capitol Reporter
El Paso Times
1005 Congress Avenue, Suite 300
Austin, Texas 78701
(w/o enclosures)