



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2007

Mr. David R. Gipson
Deputy General Counsel for Enforcement
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR2007-12949

Dear Mr. Gipson:

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# 290998.

The Texas Department of Agriculture (the "department") received a request for the producer name and address, variety and class produced, acreage certified, and number of certification tags issued for peanuts protected by various University of Florida patents. You assigned this request internal tracking number TDA-PIR-07-577. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also indicate that release of the submitted information may implicate the proprietary interests of the producers in question. Pursuant to section 552.305 of the Government Code, you were required to notify the producers of the request and of their opportunity to submit comments to this office explaining why the submitted information should be withheld from disclosure. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

The department claims that the submitted information is excepted from disclosure under section 552.110 of the Government Code. By its terms, section 552.110 only protects the interests of the person from whom the information was obtained. This provision does not protect the interests of the governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. A governmental body, however, may assert section 552.110 on behalf of an interested third party. We understand the department to also raise section 552.110 on behalf of the producers. Therefore, we will address the department's arguments on behalf of the producers under section 552.110.

The department raises the commercial or financial information aspect of section 552.110 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 Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

The department asserts that access to the submitted information would reveal the producers' production and marketing strategies and that

[t]he agricultural niche for producers of innovative pure genetic seeds and plants is highly specialized and very expensive. Seed and plant developers may spend millions of dollars crossing different varieties to develop a particular strain of seed or plant that suits a particular agricultural region in both domestic and international areas. Once developed, each unique seed or plant type is proprietary and belongs to the producer. One of the vital competitive advantages that a seed producer has over his competitors is the producer's strategic use of his resources to produce new seeds and plants. Divulging how many acres a Texas producer dedicates to a particular variety of seed or plant, or enumerations of plant population, estimated yield, total yield, or similar production figures, would allow competitors an opportunity to discover the producer's production and marketing strategies, including current inventories.

We conclude that the department has demonstrated by assertion of specific factual evidence that the release of a portion of the submitted information would cause substantial competitive harm to the producers from whom that information was obtained. Therefore, this information, which we have marked, must be withheld under section 552.110(b) of the Government Code. We find, however, that the department has not made the specific factual or evidentiary showing required by section 552.110(b) that the release of any of the remaining information would cause the producers substantial competitive harm. We

therefore conclude that the department may not withhold any of the remaining information under section 552.110. As you have raised no other exceptions to disclosure of this information, it 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).

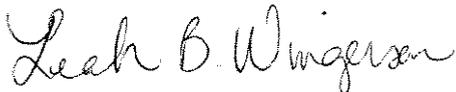
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 290998

Enc. Submitted documents

c: Mr. Terry Hollifield
Georgia Crop Improvement Association, Inc.
2425 South Milledge Avenue
Athens, Georgia 30605
(w/o enclosures)