



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2008

Mr. Robert Giddings  
Assistant General Counsel  
Texas Department of Banking  
2601 North Lamar Boulevard  
Austin, Texas 78705-4294

OR2008-08479

Dear Mr. Giddings:

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# 313447.

The Texas Department of Banking (the "department") received a request for a copy of discovery answers given by a named individual and a transcript of the deposition given by the individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also inform us that release of this information may implicate the proprietary interests of the Heritage Group ("Heritage"). Accordingly, you inform us, and have provided documentation confirming, that you notified Heritage of the request 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 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.<sup>1</sup>

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The commission received the request for information on March 31, 2008. You did not, however, request for a decision from this office via interagency mail until April 16, 2008. Further, the department has provided no evidence that its request for a ruling was deposited in interagency mail within the ten business-day deadline. *See Gov't Code* § 552.308(b) (state agency can meet the ten-day requirement if the request is sent by interagency mail and the agency provides evidence sufficient to establish that the request was deposited in interagency mail within that period). Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990; no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because your claims under sections 552.101 and 552.110 can provide compelling reasons for non-disclosure, we will consider your arguments under these exceptions.

Next, we 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 Heritage explaining why the requested information should not be released. On behalf of Heritage, however, you assert that a portion of the submitted information may be excepted under section 552.110(b) of the Government Code, which 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[.]" *Id.* § 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.*; *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); 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).

After reviewing the department's arguments and the submitted information, we find 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 information at issue would cause Heritage

substantial competitive harm. Further, as stated previously, Heritage has not submitted to this office any reasons explaining why the information responsive to the request should not be released. We therefore conclude that the department may not withhold any portion of the requested information based on section 552.110 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 154.055 of the Finance Code provides:

- (a) Information relating to the financial condition of a seller obtained by the department directly or indirectly, through examination or otherwise, other than published statements, is confidential.
- (b) The files and records of the department relating to the financial condition of a seller are confidential.
- (c) The commissioner may disclose the information described by Subsection (a) or (b) to an agency, department, or instrumentality of this or another state or the United States if the commissioner considers disclosure to be in the best interest of the public and necessary or proper to enforce the laws of this or another state or the United States.

Fin. Code § 154.055. Upon review of the submitted information, we agree that the information you have specifically marked to be withheld under this section<sup>2</sup> as well as the additional information we have marked, is "information relating to the financial condition of a seller obtained by the department directly or indirectly, through examination or otherwise." Therefore, assuming that none of this information was obtained from published statements, we conclude you may withhold this under section 552.101 in conjunction with section 154.055 of the Finance Code. However, we find that you have not demonstrated that the remaining submitted information relates to the financial condition of the seller for purposes of section 154.055, and therefore the remaining submitted information may not be withheld under this section.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). Upon review, we find that a portion of the remaining submitted information constitutes personal

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<sup>2</sup>You have marked this information with pink flags that say "confidential."

financial information. Further, we find that there is not a legitimate public interest in the release of this information. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. To the extent the remaining information contains personal financial information, we find such information is of legitimate public interest.

We note that a portion of the remaining information, which you have marked, is subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 provides that information relating to a driver's license or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). The department must withhold the Texas driver's license numbers you have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code 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." *Id.* § 552.136. The department must withhold the insurance policy numbers and the account numbers you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information relating to the financial condition of a seller that you have specifically marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 154.055 of the Finance Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, the Texas driver's license numbers you have marked under section 552.130 of the Government Code, and the insurance policy numbers and the account numbers you have marked under section 552.136 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body but will not ordinarily raise other exceptions. *See* Open Records Decision nos. 481 (1987), 480 (1987), 470 (1987).

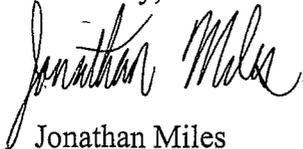
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 313447

Enc. Submitted documents

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