



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2010

Ms. Lisa Nieman
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2010-04040

Dear Ms. Nieman:

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# 373628.

The Texas Department of State Health Services (the "department") received a request for information regarding a specified investigation. You state you have or will release some information to the requestor. Although you take no position as to the disclosure of the remaining requested information, you state release of this information may implicate the proprietary interests of Cyberonics, Inc. ("Cyberonics"). Accordingly, you notified Cyberonics of the request and of its opportunity to submit comments to this office as to why the information at issue should not be released to the requestor. *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 the Act in certain circumstances). We have reviewed the submitted information.

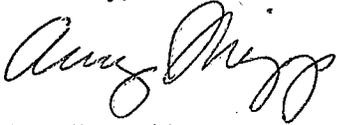
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has not received any correspondence from Cyberonics. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate Cyberonics' proprietary interest. *See*

id. § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the department may not withhold any portion of the submitted information on the basis of any proprietary interest Cyberonics may have in the information. As you raise no exceptions to disclosure, the submitted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 373628

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

c: Mr. George E. Parker, President
Cyberonics, Inc.
100 Cyberonics Boulevard, Cyberonics Building G
Houston, Texas 77058
(w/o enclosures)