



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2010

Mr. Mark Adams
Office of the General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2010-07377A

Dear Mr. Adams:

This office issued Open Records Letter No. 2010-07377 (2010) on May 21, 2010. We have examined this ruling and determined that Open Records Letter No. 2010-07377 is incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2010-07377. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

The Office of the Governor (the "governor") received a request for ten categories of information relating to the Texas Enterprise Fund (the "fund"), including documentation by the governor regarding the creation of new jobs, applications and scoring, analysis, employment by facility prior to receiving a grant, compliance reports, contracts including drafts and amendments, press releases, and compliance notices, fines, or penalties.¹ You state you are releasing some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.111 and 552.131 of the Government Code.² You also state the remaining submitted information may implicate

¹The requestor provided documentation showing the governor sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Although you initially raised section 552.104 of the Government Code for the documents identified in your brief as Exhibit G, you inform us you are withdrawing your request for a ruling on this information because you will release this information to the requestor.

the proprietary interests of one hundred and sixteen third parties. Accordingly, pursuant to section 552.305 of the Government Code, you state you have notified these third parties of the request and of each party's right to submit arguments to this office as to why its information should not be released.³ 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 received comments from some of the third parties.⁴ We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform us, and provide documentation showing, the requestor narrowed her request to exclude names, addresses, and social security numbers of individual employees, specific salaries for employees or positions, names of suppliers if the fund contract does not require the recipient to list suppliers, and bank account and bank routing numbers. In letters dated April 28, 2010 and April 30, 2010, you state the governor wishes to withdraw its request for an open records decision with regard to such information. Accordingly, this information is not responsive to the present request for information. This ruling does not

³You inform us you are withdrawing your request for a ruling on information pertaining to Alstom Power-Wind Americas; Baylor College of Medicine; CITGO Petroleum Corp.; Cox Roofing Manufacturing, L.L.C.; Grifols, Inc.; HelioVolt Corp.; Hilmar Cheese Co.; IndyMac Bank F.S.B.; Microsoft Corp.; Scott & White; and the University of Texas at Dallas. You state these third parties have notified the governor they do not object to the release of their information or they have reached an agreement with the requestor regarding release of their information. Additionally, Flopam, Inc. and SNF Holding Co. (collectively "Flopam") and Associated Hygienic Products L.L.C. ("AHP") provide documentation showing they reached agreements with the requestor regarding release of their information. Accordingly, this ruling does not address the information relating to these third parties.

⁴We have received comments from Accenture L.L.P. ("Accenture"); ADP Tax Credit Services ("ADP"); Allied Production Solutions L.P. ("Allied"); Angelou Economics ("Angelou"); Coast Water Efficient Technologies ("CWET"); Comerica, Inc. and Comerica Bank ("Comerica"); Fidelity Global Brokerage Group, Inc. ("Fidelity"); FlightSafety International, Inc. ("FlightSafety"); FMC Technologies, Inc. ("FMC"); Gulfstream Aerospace Services Corp. ("Gulfstream"); Hanger Orthopedic Group, Inc. ("Hanger"); Hexion Specialty Chemicals, Inc. ("Hexion"); Huntsman Corp. ("Huntsman"); KLN Steel Products Co., L.L.C. ("KLN"); Lehigh Hanson, Inc. ("Lehigh"); Lockheed Martin Corp. ("Lockheed"); Lowe's Companies, Inc. ("Lowe's"); Martifer-Hirschfeld Energy Systems, L.L.C., as successor in interest to Martifer Energy Systems, L.L.C. ("Martifer"); McLane Advanced Technologies, L.L.C. ("McLane"); Metrolina Greenhouses, Inc. ("Metrolina"); Motiva Enterprises, L.L.C. ("Motiva"); Nationwide Insurance and Financial Services ("Nationwide"); Newly Weds Foods, Inc. ("Newly Weds"); Northrop Grumman Corp. ("Northrop"); Oceaneering International, Inc. ("Oceaneering"); Progressive, Inc. ("Progressive"); Raytheon Co. ("Raytheon"); Rockwell Collins, Inc. ("Rockwell"); Ruiz Food Products, Inc. ("Ruiz"); Santana Textiles, L.L.C. ("Santana"); Schott Solar CSP, Inc. ("Schott"); Superior Essex Communications L.P. ("Superior"); T-Mobile USA, Inc. ("T-Mobile"); Torchmark Corp. ("Torchmark"); TransPecos Foods, L.P. ("TransPecos"); Tyson Fresh Meats, Inc. ("Tyson"); United Healthcare Services, Inc. ("United"); Verizon Wireless ("Verizon"); Vought Aircraft Industries, Inc. ("Vought"); and JPMorgan Chase Bank, N.A., as successor in interest to Washington Mutual Bank ("Washington Mutual").

address the public availability of any information that is not responsive to the request, and the governor need not release such information.

Next, we address the requestor's assertion that the governor failed to meet its obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) provides that the governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D).

The governor originally received the request on February 1, 2010. We understand that because the governor's estimated cost to process the request was over one hundred dollars, the governor required the requestor to make a deposit for payment of the anticipated costs in accordance with section 552.263 of the Government Code. Section 552.263(a) provides that a governmental body may require a deposit for payment of anticipated costs if the estimated cost exceeds one hundred dollars if the governmental body has more than 15 full-time employees. *Id.* § 552.263(a)(1). Further, section 552.263(e) provides if the governmental body requires a deposit under section 552.263, a request for public information is considered to have been received by the governmental body on the date the governmental body receives the deposit. *Id.* § 552.263(e). The governor informs us it received the deposit on February 17, 2010. Thus, pursuant to section 552.263(e), February 17, 2010, is considered the date the governor received this request for the purposes of section 552.301. Accordingly, the governor's ten-business-day deadline was March 4, 2010, and the fifteen-business-day deadline was March 11, 2010.⁵ The governor submitted a request for a ruling from this office on March 4, 2010. The governor submitted written comments stating why the governor's claimed exceptions apply and submitted Exhibits B, C, D, E, and F on March 11, 2010. *See id.* § 552.308(a) (prescribing standards for timeliness of action by United States or common or contract carrier). We note, however, the governor did not submit to this office the responsive information pertaining to third parties in Exhibit H until April 7, 2010. Thus, we find the governor failed to fully comply with the procedural requirements of section 552.301 of the Government Code with respect to Exhibit H.

⁵We note March 2, 2010 was a state holiday. *See* Gov't Code § 662.003. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act.

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; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, 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). Therefore, we will consider whether the responsive information pertaining to third parties in Exhibit H is excepted from disclosure under the Act. We will also consider your arguments for the timely submitted Exhibits B, C, D, E, and F.

Next, we note 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, some of the third parties have not submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests.⁶ Accordingly, none of the responsive information in Exhibit H belonging to these third parties may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming 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).

Some third parties argue the confidentiality notice in the fund application or the confidential and proprietary nature of their responsive information prohibits the release of the information at issue. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found.*

⁶We have not received comments from Albany Engineered Composites; Alloy Polymers, Inc.; Ally Investment; American Healthways Services, Inc.; American Marazzi Tile, Inc.; American PureTex Water Corp.; American Security Insurance Co./Assurant; Aspen Power, L.L.C.; Authentix, Inc.; Avelo Mortgage L.L.C.; Cabela's Retail TX L.P.; Cardiovascular Systems, Inc.; Caterpillar, Inc.; Core Molding Technologies, Inc.; Countrywide Home Loans, Inc.; CSC Applied Technologies L.L.C.; D.J. Shoe Company; Deloitte L.L.P.; DirecTex Holding Corp.; Dow Chemical Co.; DynCorp Technical Services L.L.C.; EPV Solar, Inc.; Fireman's Fund Insurance Co.; GlobalWatt, Inc.; GreatPoint Energy, Inc.; HCL America, Inc.; Hewitt Associates L.L.C.; Hewlett Packard; Home Depot, Inc.; IBM Corp.; INEOS Olefins & Polymers USA; JKEKT; Kelly Aviation Center, L.P.; LEARN/TIGRE; Lee Container Corp.; Lexicon Pharmaceuticals; LM Glasfiber, Inc.; Maxim Integrated Products; MiniMed Distribution Corp.—Medtronic Diabetes; National Envelope; National Human Genome Research Institute; Newco/British Petroleum; Panda Sherman Ethanol L.P.; Polymer-Wood Technologies, Inc.; Pratt Industries USA; Pulte Homes; Rackspace US, Inc.; Samsung Austin Semiconductor; Sanderson Farms, Inc.; Sematech; Sherwin-Williams Co.; Sino Swearingen Aircraft Corp.; Solo Cup Operating Corp.; Standard Multiwall Bag Manufacturing Co.; Tennessee Koyo Steering Systems; Texas Energy Center; Texas Institute for Genomic Medicine/Texas A&M System; Trace Engines, L.P.; United States Bowling Congress; UT Health Science Center Houston; Veterinary Pet Insurance Co.; or World Savings Bank F.S.B.

v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”); 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

Next, we note Progressive, Motiva, Rockwell, Torchmark, and Washington Mutual have submitted arguments regarding information beyond that which the governor submitted to this office for our review. This ruling does not address such information, and is limited to the information submitted as responsive to the request by the governor. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Next, Comerica asserts a portion of its information is the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2007-06431 (2007). In that ruling, we found the governor could withhold Comerica’s pending fund application under section 552.104 of the Government Code. However, Comerica informs us the agreement on which the previous ruling was based has since been executed. Further, the governor no longer asserts section 552.104 for Comerica’s fund application. Thus, we find the circumstances relating to Comerica’s fund application have changed, and the governor may not continue to rely on Open Records Letter No. 2007-06431 as a previous determination for Comerica’s fund application. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address Comerica’s arguments against the disclosure of its fund application.

KLN and Vought inform us portions of the submitted information are subject to prior rulings issued by this office. *See* Open Records Letter Nos. 2009-06144 (2009) (KLN’s employee list must be withheld under section 552.110(b)), 2004-10792A (2004) (portions of Vought’s information excepted from disclosure under section 552.110(b)). Further, in Open Records Letter Nos. 2009-10303 (2009), 2009-08319A (2009), and 2007-05114 (2007), we concluded the governor must withhold portions of the annual compliance verification reports for several companies under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.110 of the Government Code. Therefore, to the extent the responsive information is encompassed by our previous rulings, and as we have no indication that the law, facts, and circumstances on which those decisions were based have changed, the governor must continue to rely on our decisions in Open Records Letters Nos. 2009-10303, 2009-08319A, 2009-06144, 2007-05114, and 2004-10792A, and withhold or release

the information at issue according to those rulings. *See* Gov't Code § 552.301(a); ORD 673 at 6-7 (listing elements of first type of previous determination under Gov't Code § 552.301(a)). To the extent the responsive information is not encompassed by our previous rulings, or to the extent the information was previously ruled upon but there has been a change in the law, facts, or circumstances on which the previous rulings were based, we will consider the submitted arguments.

Metrolina states it objects to the release of portions of its responsive information. However, Metrolina does not raise any exceptions to disclosure. Therefore, the governor may not withhold any portion of Metrolina's responsive information on the basis of any proprietary interest that Metrolina may have in it. *See* Gov't Code §§ 552.301, .302. Further, although Ruiz raises sections 552.101 through 552.147 of the Government Code, it has not submitted arguments, other than under section 552.110, explaining the applicability of the claimed exceptions. Therefore, we presume Ruiz has withdrawn the remaining exceptions. *See id.* §§ 552.301, .302.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. While CWET, Hanger, Nationwide, Northrop, Santana, and Schott generally assert portions of their information are confidential by law, they have not directed our attention to any confidentiality provision, nor are we aware of any, that would make the information at issue confidential under section 552.101. *See, e.g.,* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the governor may not withhold any portion of these third parties' responsive information under section 552.101 of the Government Code. Furthermore, although Santana also raises section 552.101 of the Government Code in conjunction with the attorney-client privilege, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Section 552.101 encompasses statutes such as section 301.081 of the Labor Code, which governs the release of employment information held by the Texas Workforce Commission (the "commission"). Section 301.081 provides in pertinent part as follows:

(a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

...

(c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the

commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

Labor Code § 301.081(a), (c). Martifer asserts a portion of its responsive information consists of an employment record maintained by the commission. Section 301.081(c) states employment information maintained by the commission may be released to a public employee in the performance of public duties. *Id.* § 301.081(c). Pursuant to the interagency transfer doctrine, records that are confidential in the hands of the originating governmental body remain confidential when transferred to another governmental body. *See* Open Records Decision Nos. 674 at 4 (2001), 667 at 4 (2000); *see also* Attorney General Opinion H-836 (1976) (governmental bodies have need to maintain unrestricted flow of information, to effectuate state policy that governmental bodies cooperate in the efficient and economical administration of statutory duties). Upon review, we are unable to determine whether the commission provided the information at issue to the governor for the purpose of performing public duties. Therefore, we must rule conditionally. If the information we have marked was provided by the commission to the governor for the purpose of performing public duties, then the information at issue is confidential under section 301.081 of the Labor Code, and the governor must withhold it under section 552.101 of the Government Code. However, if the governor did not obtain the information at issue from the commission for the purpose of performing public duties, then it may not be withheld on that basis.

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 established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also generally found personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note, however, that common-law privacy protects the privacy interests of individuals, but not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also* *U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd* on other grounds, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). Comerica claims its employees' job descriptions and employment or relocation dates are protected by

common-law privacy and TransPecos claims its owners' names and ownership percentages are protected by common-law privacy.⁷ Upon review, we find none of Comerica's employees' job descriptions and employment or relocation dates is highly intimate or embarrassing and of no legitimate public interest, and the governor may not withhold any of Comerica's responsive information on the basis of common-law privacy. After reviewing TransPecos' responsive information, we find the ownership percentage information of individuals we have marked is confidential pursuant to the owners' common-law right to privacy, and we have marked portions of other third parties' information subject to common-law privacy. The governor must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note, however, the remaining TransPecos owners are business entities. Consequently, the governor may not withhold any of TransPecos' remaining responsive information under section 552.101 in conjunction with common-law privacy.

Fidelity, Gulfstream, and Progressive raise section 552.102 of the Government Code for portions of their responsive information. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102(a) protects information relating to public officials and employees. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). In this instance, the information at issue is related to private entities. Therefore, the governor may not withhold any portion of these third parties' responsive information under section 552.102(a) of the Government Code.

CWET, Comerica, Gulfstream, Hexion, Newly Weds, Northrop, Schott, and Washington Mutual raise section 552.104 of the Government Code for portions of their responsive information. Because section 552.104 only protects the interests of a governmental body and does not protect the interests of third parties, we will not consider these third parties' claims under section 552.104. *See Open Records Decision No. 592 at 8 (1991)*.

Some of the third parties raise section 552.110 of the Government Code for portions of their responsive information.⁸ Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or financial information, the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code excepts from disclosure "[a] trade secret

⁷As a number of third parties raise common-law privacy for the salary information pertaining to individual employees or in relation to specific job descriptions, we again note the requestor has narrowed her request to exclude such information. Therefore, this information is not responsive to the present request. This ruling will not address such information, and the governor need not release it in response to this request.

⁸As a number of third parties raise section 552.110 of the Government Code for the salary information pertaining to individual employees or in relation to specific job descriptions, we again note the requestor has narrowed her request to exclude such information. Therefore, this information is not responsive to the present request. This ruling will not address such information, and the governor need not release it in response to this request.

obtained from a person and privileged or confidential by statute or judicial decision.” Gov’t Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* ORD 552 at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business ... in that it is not simply information as to single or ephemeral events in the conduct of the business ... A trade secret is a process or device for continuous use in the operation of the business ... [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement’s definition of trade secret as well as the Restatement’s list of six trade secret factors.⁹ RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a private person’s claim for exception as valid under section 552.110 if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude section 552.110(a) applies unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) excepts from disclosure “[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). Section 552.110(b) requires a specific factual or evidentiary showing, not

⁹ The following are the six factors that the Restatement gives as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

In asserting their responsive information should be excepted from disclosure, CWET, McLane, Nationwide, Rockwell, and Torchmark rely on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The *National Parks* test provides that commercial or financial information is confidential if disclosure of information is likely to impair a governmental body's ability to obtain necessary information in the future. *National Parks*, 498 F.2d at 770. Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. *See Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard to be applied and requires a specific factual demonstration that the release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. *See* ORD 661 at 5-6 (discussing the enactment of section 552.110(b) by Seventy-sixth Legislature). The ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, in making our determinations under section 552.110, we will consider only the third parties' interests in their responsive information.

CWET, FlightSafety, Hanger, McLane, Rockwell, Ruiz, and Torchmark contend portions of their responsive information constitute trade secrets.¹⁰ After reviewing these companies' arguments and the information at issue, we conclude CWET, FlightSafety, Hanger, McLane, Rockwell, Ruiz, and Torchmark have failed to establish any of their responsive information meets the definition of a trade secret. Thus, the governor may not withhold any portion of the responsive information under section 552.110(a) of the Government Code.

Accenture, Angelou, CWET, Comerica, Fidelity, FlightSafety, FMC, Gulfstream, Hanger, Hexion, Huntsman, KLN, Lehigh, Lockheed, Lowe's, Martifer, McLane, Nationwide, Newly Weds, Northrop, Oceaneering, Progressive, Raytheon, Rockwell, Ruiz, Santana, Schott, Superior, T-Mobile, Torchmark, TransPecos, Tyson, and United seek to withhold portions of their responsive information under section 552.110(b). Upon review, we determine CWET, FlightSafety, Hanger, KLN, Lowe's, Martifer, McLane, Nationwide, Newly Weds, Raytheon, Superior, T-Mobile, TransPecos, and Tyson have established portions of their responsive information, which we have marked, constitute commercial or financial

¹⁰Although Hanger also asserts its responsive information is excepted as a trade secret under section 552.101 of the Government Code, the appropriate exception for arguing trade secret protection is section 552.110.

information, the release of which would cause their companies substantial competitive injury. Therefore, the governor must withhold the portions of these companies' responsive information we have marked under section 552.110(b) of the Government Code. However, we find CWET, FlightSafety, Hanger, KLN, Lowe's, Martifer, Nationwide, Newly Weds, Superior, and TransPecos have made only conclusory allegations that the release of their remaining responsive information would result in substantial competitive injury. Furthermore, we find Accenture, Angelou, Comerica, Fidelity, FMC, Gulfstream, Hexion, Huntsman, Lehigh, Lockheed, Northrop, Oceaneering, Progressive, Rockwell, Ruiz, Santana, Schott, Torchmark, and United have made only conclusory allegations that the release of any of their responsive information would result in substantial competitive injury. *See Open Records Decision Nos. 661* (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the governor may not withhold any of the remaining responsive information under section 552.110(b) of the Government Code.

Accenture, Angelou, CWET, Gulfstream, Hanger, Hexion, Lowe's, Motiva, Nationwide, Newly Weds, Santana, Schott, TransPecos, United, and Verizon raise section 552.131 of the Government Code for portions of their remaining responsive information. Section 552.131 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)–(b). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “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.” *Id.* Thus, the protection provided by section 552.131(a) is co-extensive with that afforded by section 552.110 of the Government Code. *See id.* § 552.110(a)–(b); ORD 552, 661. Therefore, because we have already disposed of the section 552.131 claims of all these third parties except Verizon under section 552.110, we will only address the applicability of section 552.131(a) of the Government Code to Verizon’s responsive information. Upon review, we find Verizon has established portions of its responsive information constitute commercial or financial information, the release of which would cause the company substantial competitive injury. Therefore, the governor must withhold the portions of Verizon’s responsive information we have marked under section 552.131(a)(2) of the Government Code. However, Verizon has made only conclusory allegations that the release of its remaining responsive information would result in substantial competitive injury, and the governor may not withhold any of Verizon’s remaining responsive information on that basis. Further, we note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the governor does not assert section 552.131(b) for any responsive third-party information, we conclude that no portion of the third parties’ remaining responsive information is excepted under section 552.131(b) of the Government Code.

CWET, FMC, and Newly Weds raise section 552.137 of the Government Code for portions of their remaining responsive information. Section 552.137 provides in part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

...

(c) Subsection (a) does not apply to an e-mail address:

...

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]

Gov't Code § 552.137(a), (c). These third parties assert the e-mail addresses in their responsive information are excepted under section 552.137. However, we note the e-mail addresses at issue are subject to section 552.137(c)(3). We therefore find these e-mail

addresses are not excepted from disclosure under section 552.137(a) and may not be withheld on that basis.

The governor claims Exhibits B and C are excepted from disclosure under the deliberative process privilege encompassed by section 552.111 of the Government Code. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See id.*

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You state Exhibit B consists of draft contracts between the governor and fund recipients, and Exhibit C consists of draft amendments to contracts between the governor and fund recipients. You inform us these documents "reflect early versions of the contracts and amendments before all terms were finalized[.]" and some of the drafts include notations and editing marks by the governor's staff. You further state the governor has executed or intends to execute final versions of these contracts, and these finalized contracts will be released to the public. Based on your representations and our review, we find you have established the deliberative process privilege is applicable to the information at issue. Therefore, the governor may withhold Exhibits B and C under section 552.111 of the Government Code.

The governor claims Exhibits D, E, and F are excepted from disclosure under section 552.131(b) of the Government Code. As noted above, section 552.131(b) provides as follows:

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(b). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. You state Exhibits D, E, and F relate to entities negotiating to obtain funding from the governor. You additionally state none of these entities has received funding, and there is no final contract in place for any of these entities. You state Exhibit D consists of pending applications from entities seeking funding from the governor. You inform us Exhibit E consists of the governor's financial analyses of entities currently seeking funding. You state Exhibit F consists of communications from entities currently seeking funding. After reviewing the submitted information, we agree Exhibit E is subject to section 552.131(b) of the Government Code. Thus, the governor may withhold Exhibit E in its entirety. However, you do not assert any of the inducements to any of the entities mentioned in Exhibits D or F were actually offered by the governor or by another person. Section 552.131(b) only excepts those incentives offered to the business prospect by a governmental body or another person; it does not except incentives requested by the business prospect. Additionally, you have not identified the involved parties or adequately explained what incentives, if any, are being offered by the governor in Exhibit F. Based on your representations and our review, we conclude the governor has failed to demonstrate the applicability of section 552.131(b) to Exhibits D and F.

We note Exhibit D contains ownership percentage information of individuals. As stated above, personal financial information unrelated to a financial transaction with the government is generally intimate and embarrassing. *See* ORD 523 at 3. Therefore, the governor must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. As you raise no other argument against disclosure, the remaining responsive information in Exhibit D and Exhibit F must be released.

In summary, the governor must continue to rely on our decisions in Open Records Letters Nos. 2009-10303, 2009-08319A, 2009-06144, 2007-05114, and 2004-10792A, and withhold or release the responsive information at issue according to those rulings. If Martifer's responsive information, which we have marked, was provided to the governor by the commission for the purpose of performing public duties, then the governor must withhold it under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code. The governor must withhold the responsive third-party information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The governor must withhold the responsive third-party information we have marked under section 552.110(b) of the Government Code. The governor must withhold the

responsive third-party information we have marked under section 552.131(a)(2) of the Government Code. The governor may withhold Exhibits B and C under section 552.111 of the Government Code. The governor may withhold Exhibit E under section 552.131(b) of the Government Code. The governor must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining responsive information must be released.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/sdk

Ref: ID# 378641

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Mr. David Carlile
American Marazzi Tile, Inc
359 Clay Road
Sunnyvale, Texas 75182
(w/o enclosures)

Mr. Saeed Ally
Ally Investments
2501 Jimmy Johnson Boulevard, Suite 201
Port Arthur, Texas 77640
(w/o enclosures)

Mr. Stephan Jutz
ALSTOM Power- Wind Americas
100 Gateway Centre Parkway
Richmond, Virginia 23235
(w/o enclosures)

Mr. Kade Miller
Assurant
260 Interstate North Circle
Atlanta, Georgia 30068
(w/o enclosures)

Mr. Neil Leibman
Aspen Power LLC
800 Bering Drive, Suite 250
Houston, Texas 77057
(w/o enclosures)

Mr. Alan Schoenbaum
General Counsel
Rackspace, Inc.
9725 Datapoint Drive, Suite 100
San Antonio, Texas 75051
(w/o enclosures)

Mr. Robert Thatcher
Cardiovascular Systems, Inc.
651 Campus Drive
St. Paul Minnesota 5512
(w/o enclosures)

Mr. Gary Stroup
Caterpillar, Inc.
P.O. Box 610 - AC 6101
Moosville, Illinois
(w/o enclosures)

Mr. Walter L. Cox
Cox Roofing Manufacturing,
P.O. Box 38
Naples, Texas 75568
(w/o enclosures)

Mr. Sanjeev Chitre
Global Watt Inc.
2680 First Street, Suite 215
San Jose, California 95134
(w/o enclosures)

Mr. Dale Behm
American PureTex Water Corporation
101 ½ South Kickapoo Street, Suite 17
Lincoln, Illinois 62656
(w/o enclosures)

Ms. Mary Chaput
American Healthways Services, Inc.
3841 Green Hills Village Drive
Nashville, Tennessee 37215
(w/o enclosures)

Mr. Byron A. Rodriguez, Esq
Counsel to Associate Hygienic Partners
Virtual Law Partners L.L.P.
548 Market Street
San Francisco, California 94105
(w/o enclosures)

Mr. J. Weston Moffett
Avelo Mortgage, L.L.C.
600 East Las Colinas Boulevard, Suite 400
Irving, Texas 75039
(w/o enclosures)

Dr. Arthur Sands
Lexicon Genetics
8800 Technology Forest Place
The Woodlands, Texas 77381
(w/o enclosures)

Mr. Stephen Klestinec
Core Molding Technologies, Inc.
P.O. Box 28183
Columbus, Ohio 43228
(w/o enclosures)

Mr. Frank Friedman
Deloitte, LLP
1100 Walnut Street, Suite 3300
Kansas City, Missouri 64106
(w/o enclosures)

Mr. Donald Hrebec
D.J. Shoe Company
9769 Grantview Drive
St. Louis, Missouri 63123
(w/o enclosures)

Mr. Stephen Hazlewood
The Dow Chemical Company
2301 Brazosport Boulevard
Freeport, Texas 77541
(w/o enclosures)

Mr. Hudson White
DirecTex Holding Corporation
3301 Golden Road, Suite 101
Tyler, Texas 75701
(w/o enclosures)

Mr. James Groelinger
EPV Solar, Inc.
8 Marlen Drive
Robbinsville, New Jersey 08691
(w/o enclosures)

Mr. Charles Grove
DynCorp Technical Services, LLC
6500 West Freeway, Suite 600
Fort Worth, Texas 76116
(w/o enclosures)

Mr. Peter Kinnear
FMC Technologies
1777 Gears Road
Houston, Texas 77067
(w/o enclosures)

Mr. Nathan Moser
National Envelope
333 Earle Ovington Boulevard, Suite 1035
Uniondale, New York 11553
(w/o enclosures)

Ms. Nora Blum
GreatPoint Energy, Inc.
1430 Enclave Parkway
Houston, Texas 77077
(w/o enclosures)

Mr. Anthony Kosmas
Fireman's Fund Insurance Company
777 San Marin Drive
Novato, California 94998
(w/o enclosures)

Mr. Chuck Dickey
General Counsel
Lockheed Martin Space System
P.O. Box 58547, MC-A8A
Houston, Texas 77258
(w/o enclosures)

Mr. C. Ben Foster
Lead Counsel for State & Local Gov't
Accenture L.L.P.
1501 South Mopac Expressway, Suite 300
Austin, Texas 78746
(w/o enclosures)

Mr. Brian Coffenberry
Albany Engineered Composites
112 Airport Drive
Rochester, New Hampshire 03867
(w/o enclosures)

Mr. Max de Brouwer
Grifols, Inc.
2410 Lillyvale Avenue
Los Angeles, California 90032
(w/o enclosures)

Mr. Russ R. Stolle
Senior Vice President
Deputy General Counsel
Huntsman
10003 Woodloch Forest Drive
The Woodlands, Texas 77380
(w/o enclosures)

Mr. Michael H. Hyer
Vice President/ General Counsel
Lehigh Hanson, Inc.
300 East Carpenter Freeway
Irving, Texas 75062
(w/o enclosures)

Mr. Michael J. Colitti, Jr.
Chief Financial Officer
Metrolina Greenhouses, Inc.
16400 Huntersville Concord Road
Huntsville, North Carolina 28078
(w/o enclosures)

Mr. Stephan A. Huntz
Attorney for Motiva Enterprises
Fulbright & Jaworski, L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(w/o enclosures)

Mr. William Christian
Counsel to Heliovolt Corporation
Grave Dougherty Hearon & Moody
P.O. Box 98
Austin, Texas 78767
(w/o enclosures)

Mr. Herbert W. Appel, Jr.
Secretary/ Treasurer
Texas Energy Center
10650 Highway 6, Suite 300
Sugarland, Texas 77478
(w/o enclosures)

Mr. Brian D. Pollard
Counsel to Hexion Specialty Chemical
Wilson Elser Moskowitz Edelman Dicker
Bank of America Plaza
901 Main Street, Suite 4800
Dallas, Texas 75202
(w/o enclosures)

Mr. Jack E. Skaggs
Attorney for Hanger Orthopedic Group
Jackson Walker, L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(w/o enclosures)

Mr. Rodrigo J. Figueroa
Attorneys for KLN Steel Products Comp
Cox Smith Attorneys
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
(w/o enclosures)

Ms. Dionne Carney Rainey
Counsel to Martifer- Hirschfield System
Hunton & Williams
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202-2799
(w/o enclosures)

Mr. David J. Goodman
Counsel to McLane Advance Technologies
Bourland Wall & Wenzel, P.C.
301 Commerce Street, Suite 1500
Fort Worth, Texas 76102-4115
(w/o enclosures)

Ms. Joanna Kay Hamilton
AVP Regional Counsel
Nationwide Insurance & Financial Services
1005 Congress Avenue, Suite 330
Austin, Texas 78701
(w/o enclosures)

Mr. Ryan S. Liles
Vice President
Allied Production Solutions LP
14800 St. Marys Lane, Suite 130
Houston, Texas 77079
(w/o enclosures)

Mr. Robert J. Collins
Attorneys for Angelou Economic.
Andrews Kurth L.L.P.
600 Travis, Suite 4200
Houston, Texas 77002-3090
(w/o enclosures)

Mr. R. Russel Hollenbeck
Counsel to Flopam, Inc.
Wright Brown & Close LP
Three Riverway, Suite 600
Houston, Texas 77056
(w/o enclosures)

Mr. Andrew J. Schumaker
Attorney for Comerica Inc &
Comerica Bank
Winstead, PC
600 Travis Street, Suite 1100
Houston, Texas 77002
(w/o enclosures)

Mr. Timothy W. Whelan
Corporate Attorney
Newly Weds Foods
4140 West Fullerton Avenue
Chicago, Illinois 60639
(w/o enclosures)

Mr. Rick C. Rosenjack
Vice President & General Manager
Progressive, Inc.
1030 Commercial Blvd North
Arlington, Texas 76001-7197
(w/o enclosures)

Mr. Michael Gredlein
Director National Accounts
ADP Tax Credit Services
5680 New Northside Drive, Northwest
Atlanta, Georgia 30328
(w/o enclosures)

Mr. Brian C. Newby
Counsel to FlightSafety International
Cantey Hanger L.L.P.
600 West 6th Street, Suite 300
Fort Worth, Texas 76102-3685
(w/o enclosures)

Mr. Jay R. Lindren
Counsel to United Healthcare Services, Inc.
Dorsey & Whitney L.L.P.
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
(w/o enclosures)

Mr. Adam H. Sencenbaugh
Associate
Counsel to Coast Water Efficient Technologies
Haynes and Boone L.L.P.
600 Congress Avenue, Suite 1300
Austin, Texas 78701
(w/o enclosures)

Mr. Chris O'Connell
Minimed Distribution Corporation
MedRonic Diabetes
18000 Devonshire Street
Northridge, California 91325
(w/o enclosures)

Mr. D. Marc Havis
Tax Director
Gulf Stream Aerospace Corporation
P.O. Box 2206
Savannah, Georgia 31402-2206
(w/o enclosures)

Ms. Valerie Lewis- Corder
Contracts Manager
Northrop Grumman
One Hornet Way
El Segundo, California 90245
(w/o enclosures)

Mr. John G. Michael
Attorney for Ruiz Food Products
Baker Manock & Jenson, P.C.
5260 North Palm Avenue, 4th Floor
Fresno, California 93704
(w/o enclosures)

Mr. Antonio Mendoza
Attorney for Santana Textiles
Attorney at Law
135 Paseo Del Prado, Suite 8
Edinberg, Texas 78539
(w/o enclosures)

Mr. Mark Elser
Vice President
Tyson Fresh Meats, Inc.
2210 West Oaklawn Drive, CP-13
Springdale, Arkansas 72765
(w/o enclosures)

Mr. Mark D. Wolf
Assistant General Counsel
FMC Technologies
1803 Gears Road
Houston, Texas 77067
(w/o enclosures)

Mr. Ken Horner
Indymac Bank FSB
888 East Walnut Avenue
Pasadena, California 91101
(w/o enclosures)

Dr. Kenneth L. Shine, M.D.
Executive Vice Chancellor
University of Texas Health Science Center
601 Colorado Street, Suite 205
Austin, Texas 78701
(w/o enclosures)

Mr. Jeffery L. Hunt
Senior Counsel, Office of General Counsel
Raytheon Company
2501 West University Drive, MS 8001
McKinney, Texas 75071
(w/o enclosures)

Mr. Matthew H. Waldron
Attorney for TransPecos Foods, LP
Kennedy Toppin Sutherland, L.L.P.
112 East Pecan Street, Suite 800
San Antonio, Texas 78205
(w/o enclosures)

Mr. Bryce Seki
Attorney for Vought Aircraft Industries
Fulbright & Jaworski, L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792
(w/o enclosures)

Mr. Thomas M. Hennessey
Managing Director
JP Morgan Chase & Company
1111 Polaris Pkwy, Ste 4P, MC OHI-0152
Columbus, Ohio 43240-2050
(w/o enclosures)

Mr. Murali Krishnamurthy
HCL America, Inc.
330 Portrero Avenue
Sunnyvale, California 94085
(w/o enclosures)

Ms. Marilyn Hewson
Kelly Aviation Cent, LP
611 Duncan Drive, Building 360
San Antonio, Texas 78226
(w/o enclosures)

Mr. Warren Ault
LM Glasfiber (ND), Inc.
117 North Jefferson Street, Ste 400
Chicago, Illinois 60661
(w/o enclosures)

Mr. Rhett Hurless
Panda Sherman Ethanol, LP
4100 Spring Valley Rd, Suite 1001
Dallas, Texas 75244
(w/o enclosures)

Mr. Richard J. Francheck
Attorney for Rockwell Collins, Inc.
Attorney for Torchmark Corporation
Locke Lord Bissell & Liddell, L.L.P.
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201
(w/o enclosures)

Mr. Evan Daniels
Polymer-Wood Technologies, Inc.
8411 Preston Road, Suite 635
Dallas, Texas 75035
(w/o enclosures)

Ms. Sara Moss
The Sherwin-Williams Company
301 West Plant Road
Ennis, Texas 75119
(w/o enclosures)

Mr. Robert Rouse
Solo Cup Operating Corporation
10100 Reisterstown Road
Owings Mill, Maryland 21117
(w/o enclosures)

Mr. Terry Hansen
IBM Corporation
1301 K Street Northwest, Suite 1200-W
Washington, DC 20005
(w/o enclosures)

Mr. Tim Almone
Hewlett Packard
P.O. Box 692000, MC- 130109
Houston, Texas 77269
(w/o enclosures)

Mr. Robert Hicks
Lowe's Home Centers, Inc.
P.O. Box 1111
North Wilkesboro, North Carolina 28659
(w/o enclosures)

Mr. Daniel Frappier
Counsel to Microsoft
Davis Wright Tremaine L.L.P.
Suite 200
1919 Pennsylvania Avenue Northwest
Washington DC 20006-3402
(w/o enclosures)

Mr. David Kosboth
Pratt Industries (USA)
1800 Sarasota Business Parkway
Conyers, Georgia 30013
(w/o enclosures)

Mr. Michael Schweninger
Pulte Homes
100 Bloomfield Hills Parkway, Suite 300
Bloomfield Hills, Michigan 48304
(w/o enclosures)

Mr. John Propeck
Oceaneering Space Systems
16665 Space Center Boulevard
Houston, Texas 77058
(w/o enclosures)

Mr. Manfred Jaeckel
Vice President/ General Counsel
Schott North America, Inc.
555 Taxter Road
Elmsford, New York 10523
(w/o enclosures)

Ms. Mary Love Sullenberger
Senior VP & General Counsel
Cuperior Essex
6120 Powers Ferry Road, Ste 150
Atlanta, Georgia 3033-2923
(w/o enclosures)

Mr. James Strum
United States Bowling Congress
2301 South 76th Street
Greendale, Wisconsin 53129
(w/o enclosures)

Mr. Dennis Drent
Veterinary Pet Insurance Company
3060 Saturn Street
Brea, California 92821
(w/o enclosures)

Mr. Michel Bowers
Tennessee Koyo Steering Systems
55 Excellence Way
Vonore, Tennessee 37885
(w/o enclosures)

Mr. Brian Marron
Hewitt Associates, LLC
100 Half Day Road
Lincolnshire, Illinois 60069
(w/o enclosures)

Mr. James A. Jones
Vice President & CFO
Alloy Polymers
3310 Deepwater
Richmond, Virginia 23229
(w/o enclosures)

Mr. Glen Widmer
Senior Manager
T-Mobile USA, Inc.
12920 Southeast 38th Street
Bellevue, Washington 98006
(w/o enclosures)

Mr. Dylan T. Tonry
VP & Associate General Counsel
Fidelity Investments
82 Devonshire Street, F7D
Boston, Massachusetts 02109-3614
(w/o enclosures)

Mr. Paul Lin
Standard Multiwall Bag Mfg Company
P.O. Box 5158
Aloha, Oregon 97006
(w/o enclosures)

Ms. Kelly Simmons
Sino Swearingen Aircraft Corporation
1770 Skyplace Boulevard
San Antonio, Texas 78216
(w/o enclosures)

Mr. Joseph Greco
Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
(w/o enclosures)

Mr. Thomas McBroom
World Savings Bank FSB
1901 Harrison Street
Oakland, California 94612
(w/o enclosures)

Mr. Robert Falstad
General Counsel & Secretary
Sematch
2706 Montopolis Drive
Austin, Texas 78741
(w/o enclosures)

Mr. Ralph Castner
Treasurer
Cabelas Retail Texas
One Cabela Drive
Sidney, Nebraska 69160
(w/o enclosures)

Mr. Christopher Demers
Senior Manager
The Home Depot
1300 Park Center Drive
Austin, Texas 78744
(w/o enclosures)

Mr. Robert J. Kostelnik
Vice President of Shared Services
Citgo Petroleum Corporation
1293 Eldridge Parkway
Houston, Texas 77007
(w/o enclosures)

Mr. Charles Saunders
Ineos Olifins & Polymers USA
2600 South Shore
League City, Texas 77573
(w/o enclosures)

Mr. Jim Williams
Executive Director
LEARN & TIGRE
P.O. Box 7969
Austin, Texas 78713
(w/o enclosures)

Mr. Charles G. Rigg
Senior Vice President
General Counsel
Maxim Integrated Products
120 San Gabriel Drive
Sunnyvale, California 94086
(w/o enclosures)

Mr. Charles Silva, Jr.
Vice President
Albany International
1373 Broadway
Menands, New York 12204
(w/o enclosures)

Mr. Craig Stamm
CFO
Authentix, Inc.
4355 Excel Parkway, Suite 100
Addison, Texas 75001
(w/o enclosures)

Mr. Mark E. Michalak
Executive Vice President
Countrywide Home
450 American Street, Mail Stop SV-3-62
Simi Valley, California 93065
(w/o enclosures)

Baylor College of Medicine
Office of General Treasurer
One Baylor Plaza
Houston, Texas 77030
(w/o enclosures)

Mr. Greg Oelke
Counsel to Hilmar Cheese Company
Hunter & Oleke, P.C
P.O. Box 792
Dalhart, Texas 79022
(w/o enclosures)

Mr. Jesse De Leon
Human Resources
JTEKT Automotive
Koyo Steering Systems of North America
4400 Sterilite Drive
Ennis, Texas 75119
(w/o enclosures)

Mr. Bob Billingsley
Director of Development
Sanderson Farms, Inc.
P.O. Box 988
Laurel, Mississippi 39411
(w/o enclosures)

Mr. Keith Laughman
Newco
4004 Worth Street
Dallas, Texas 75246
(w/o enclosures)

Mr. Jimmy Carroll
Office of General Counsel
Scott & White
2401 South 31st Street
Temple, Texas 76508
(w/o enclosures)

Mr. Franklyn G. Jenifer
President
University of Texas at Dallas
P.O. Box 830688
Richardson, Texas 75083
(w/o enclosures)

Mr. Jason Leong
Washington Mutual Bank
WMC 1007
1301 Second Avenue, 10th Floor
Seattle, Washington 98101
(w/o enclosures)

Mr. Derek E. Parker
General Manager
Trace Engines, LP
P.O. Box 2948
Midland, Texas 79702
(w/o enclosures)

Mr. Don Lee
President
Lee Container Corporation
P.O. Box 575
Homerville, Georgia 31634
(w/o enclosures)

Mr. Joseph Scarcello
CSC Applied Technologies
6500 West Freeway, Suite 600
Fort Worth, Texas 76116
(w/o enclosures)

Mr. Alan Schoenbaum
General Counsel
Rackspace, Inc.
9725 Datapoint Drive, Suite 100
San Antonio, Texas 75051
(w/o enclosures)

Ms. Catherine Q. Morse
General Counsel
Samsung Austin Semiconductor
12100 Samsung Boulevard
Austin, Texas 78754
(w/o enclosures)

Mr. Guy Diedrich
Office of Vice Chancellor
Texas A&M System
1700 Research Parkway, Suite 250
College Station, Texas 77845
(w/o enclosures)

Mr. W. Stephen Benesh
Counsel to Associated Hygienic Products
Bracewell & Giuliani, L.L.P.
111 Congress Avenue, Suite 2300
Austin, Texas 78701-4061
(w/o enclosures)