



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 7, 2010

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

OR2010-10000

Dear Mr. Adams:

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# 387814.

The Office of the Governor (the "governor") received a request for specified termination agreements, contract amendments, compliance reports, and cumulative surplus job credits related to the Texas Enterprise Fund. You state you will release a portion of the requested information. Although you raise no exceptions to disclosure of the submitted information, you indicate release of this information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, the governor has notified Raytheon Company ("Raytheon"); Citgo Petroleum Corporation ("Citgo"); Hilmar Cheese Company ("Hilmar"); INEOS USA LLC ("INEOS"); East Texas Lee Container LP ("Lee Container"); Lockheed Martin ("Lockheed"); Maxim Integrated Products ("Maxim"); and Texas Energy Center of their right to submit arguments to this office explaining why their information should not be released.<sup>1</sup> See Gov't Code § 552.305 (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

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<sup>1</sup>You inform us you are withdrawing your request for a ruling on information pertaining to Rockwell Collins, Inc. You state Rockwell Collins, Inc. notified the governor it does not object to the release of its information. Accordingly, this ruling does not address the information relating to Rockwell Collins, Inc.

to raise and explain applicability of exception in certain circumstances). We have received comments from Raytheon. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that some of the requested information regarding Raytheon and Lockheed may have been the subject of a previous request, as a result of which this office issued Open Records Letter No. 2010-07377 (2010). In that ruling, we ruled that Raytheon had established that a portion of its information constituted commercial or financial information, the release of which would cause the company substantial competitive harm. Therefore, we concluded that the governor must withhold the portion of Raytheon's information we had marked under section 552.110(b) of the Government Code. However, we determined that Lockheed had not made the specific factual or evidentiary showing required by section 552.110(b) of the Government Code. Thus, Lockheed had not demonstrated that substantial competitive injury would result from the release of any of its information. We have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the submitted information is identical to that previously ruled upon by this office, the governor must continue to rely on Open Records Letter No. 2010-07377 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling. *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). To the extent the submitted information was not previously requested or ruled upon by this office, we will address the arguments against disclosure of the information.

Next, we note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Citgo, Hilmar, INEOS, Lee Container, Lockheed, Maxim, and Texas Energy Center. Thus, because these third parties have not demonstrated that any of the requested information is proprietary for the purposes of the Act, the governor may not withhold any of the information on that basis. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Raytheon raises 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[.]" 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.*; see also Open Records Decision No. 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).

Upon review, we find that Raytheon has established that the portions of its information revealing the average salaries for specific job descriptions, which we have marked, constitute commercial or financial information, the release of which would cause Raytheon substantial competitive injury. However, we find that Raytheon has not demonstrated that substantial competitive injury would result from the release of its remaining information at issue. See ORD 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). Accordingly, the governor must only withhold the information we have marked in Raytheon's information under section 552.110(b) of the Government Code.

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. This section 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.<sup>2</sup> *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. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. See Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Some of the remaining information contains personal financial information of identified individuals that we find is intimate or embarrassing and of no legitimate public interest. Accordingly, the governor must withhold the information we have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, to the extent the submitted information is identical to that previously ruled upon by this office, the governor may continue to rely on our decision in Open Records Letter No. 2010-07377 and withhold or release the previously ruled upon information in accordance with that ruling. The governor must withhold the information we have marked under

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.110(b) of the Government Code and section 552.101 of the Government Code in conjunction with common-law privacy. The remaining 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](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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 387814

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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