



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2010

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal and Regulatory Affairs, MC 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2010-13110

Dear Ms. Villarreal-Reyna:

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# 391896 (TDI# 105007).

The Texas Department of Insurance (the "department") received a request for a specified subscription agreement between two third parties. Although you take no position as to whether the submitted information is excepted under the Act, you state that the submitted documents may contain proprietary information of a third party subject to exception under the Act. Accordingly, you state, and provide documentation showing, that you notified Integrity Title Records, Ltd. L.L.P. ("Integrity") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Integrity has responded to this notice. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b). A governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); see also Open Records Decision No. 319 (1982). The presumption that

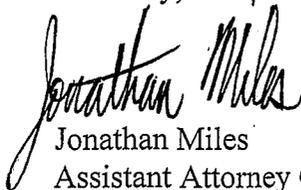
information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will consider Integrity's arguments.

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. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Integrity asserts, and the submitted documents reflect, that the submitted subscription agreement is between Integrity and a private third party. Integrity argues that if the submitted subscription agreement were disclosed, it would allow Integrity's competitors to "target Integrity's customers by offering lower prices, offering more lenient contract terms, or otherwise disrupting the business relationship between Integrity and its customers." Upon review of Integrity's arguments, we find Integrity has demonstrated that release of the information at issue would cause the company substantial competitive harm. Therefore, the department must withhold the information at issue under section 552.110(b) of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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_ori.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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 391896

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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