



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2010

Mr. Mark Fenner  
General Counsel  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711-2080

OR2010-13705

Dear Mr. Fenner:

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# 393019 (PIR TxRC 491).

The Texas Racing Commission (the "commission") received a request for any traffic analysis submitted within the last two years pertaining to the Gulf Coast Race Track at a specified address. Although you indicate the commission takes no position with respect to the public availability of the submitted traffic analysis information, you state its release may implicate the proprietary interests of Gulf Coast Racing. Accordingly, you state, and provide documentation showing, the commission notified Gulf Coast Racing of the request and of the company's 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

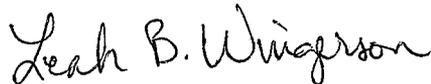
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Gulf Coast Racing explaining why its submitted traffic analysis information should not be released. Therefore, we have no basis to conclude Gulf Coast Racing has protected proprietary interests in this information. *See id.* § 552.110; 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), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the commission may not withhold Gulf Coast Racing's submitted traffic analysis information on the basis of any proprietary interests Gulf Coast Racing may have in the information. As no exceptions to disclosure have been claimed, the submitted 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 393019

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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For Gulf Coast Racing  
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(w/o enclosures)