



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2011

Mr. Justin Gordon  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2011-04881

Dear Mr. Gordon:

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# 415544 (OOG ID# 460-10).

The Office of the Governor (the "governor") received a request for communications between the governor "and any gambling or 'gaming interests,' their lobbyists, or anyone acting on their behalf for the years 2005-2009[.]" You state the governor is withholding or releasing some of the requested information pursuant to the previous determination set forth in Open Records Letter No. 2008-00554 (2008).<sup>1</sup> You inform us the governor is also releasing some additional responsive information. You do not take a position as to whether the submitted information is excepted under the Act; however, you state you notified the following interested third parties of the governor's receipt of the request for information and of the right of each to submit arguments to this office as to why the submitted information should not be released to the requestor: Macquarie Securities, Morgan Stanley, UBS Investment Bank ("UBS"), Bank of America Merrill Lynch, Graves Management, Inc., and Scott Balice

---

<sup>1</sup>In Open Records Letter No. 2008-00554, we determined the governor may withhold some of the requested information from disclosure pursuant to sections 552.106 and 552.111 of the Government Code, but that the governor must release the remaining responsive information in accordance with copyright law. *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).

Strategies. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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). We have received correspondence from Morgan and UBS. Morgan Stanley informs us it does not object to the release of its information. UBS asserts some of its information is excepted from disclosure under section 552.110 of the Government Code. *See* Gov't Code § 552.305(d). We have reviewed the submitted information and arguments.

Initially, you acknowledge, and we agree, that the governor failed to comply with the procedural requirements of section 552.301 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 submitted information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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). 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, 325 at 2 (1982). Accordingly, because third-party interests are at stake, we will address whether the submitted information must be withheld under the Act.

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 letter, neither Macquarie Securities, Bank of America Merrill Lynch, Graves Management, Inc., nor Scott Balice Strategies has submitted to this office any reasons explaining why the submitted information should not be released. In addition, as noted above, Morgan Stanley does not object to the release of its information. We, thus, have no basis for concluding any portion of the submitted information constitutes proprietary information of these companies, and the governor may not withhold any portion of the submitted information on that basis. *See* 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, 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.

UBS asserts some of its information is excepted from disclosure under section 552.110(b) of the Government Code. 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 conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See*

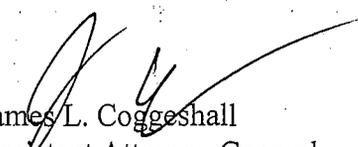
ORD 661 at 5-6 (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm). The information at issue consists of a presentation booklet dated March of 2008 that relates to privatization of the Texas State Lottery. We note UBS has made some of the information it seeks to withhold publicly available on its website. Because UBS itself published this information, we are unable to conclude such information is proprietary. In addition, having considered UBS's arguments and reviewed the information at issue, we find UBS has made only conclusory allegations that release of the remaining information at issue would cause the company substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See id.* § 552.110(b). Thus, the governor may not withhold any of UBS's information pursuant to section 552.110(b) of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Accordingly, the governor must release the submitted information to the requestor, but any copyrighted information may only be released in accordance with copyright law.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tf

Ref: ID# 415544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Matt Evans  
Macquarie Securities  
125 West 55<sup>th</sup> Street  
New York, New York 10019  
(w/o enclosures)

Ms. Alita Wingfield  
Morgan Stanley  
440 South LaSalle Street  
Chicago, Illinois 60605  
(w/o enclosures)

Mr. Hissan Bajwa  
UBS Investment Bank  
1285 Avenue of the Americas  
New York, New York 10019  
(w/o enclosures)

Mr. Jeffrey Carey  
Bank of America Merrill Lynch  
4 World Financial Center  
New York, New York 10080  
(w/o enclosures)

Mr. Jeffery Hiser  
Graves Management, Inc.  
1301 South Capital of Texas Highway, Suite 125  
Austin, Texas 78746  
(w/o enclosures)

Mr. Brian Lepenske  
Scott Balice Strategies  
c/o Justin Gordon  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711  
(w/o enclosures)