



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2011

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

OR2011-11025

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# 426692 (OOG #208-11).

The Office of the Governor (the "governor") received a request for monitoring reports for Convergen LifeSciences, Inc. ("Convergen"). You state you have redacted certain information under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You also state the governor is withdrawing its request for a ruling for most of the requested information and state you have released this information to the requestor. Although you take no position on the remaining requested information, you state it may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the governor notified Convergen of the request for information and of its right to submit arguments to this office as to why the information at issue 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). We have received comments from

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<sup>1</sup>Open Records Decision No. 684 is a previous determination issued by this office to all governmental bodies authorizing them to withhold ten categories of information, including bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Convergen. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the governor has redacted certain information from the submitted documents, which we have marked for release, that Convergen does not seek to withhold and for which the governor raises no exceptions to disclosure. *See* Gov't Code § 552.301(a), (e)(1)(D). Accordingly, as no arguments have been raised for this information, it must be released.

Convergen raises section 552.110 of the Government Code for most of the information at issue. 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.*; Open Records Decision No. 661 (1999).

Upon review, we find Convergen has established release of the information at issue would cause it substantial competitive injury. Therefore, the governor must withhold the marked information under section 552.110(b) of the Government Code.<sup>2</sup>

Convergen raises section 552.136 of the Government Code for some of its remaining information at issue. Section 552.136 states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find Convergen has failed to demonstrate how any of the information it has marked constitutes an access device number used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. Therefore, the governor may not withhold any of the information Convergen marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides that “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 [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address

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<sup>2</sup>As our ruling for this information is dispositive, we need not address Convergen's remaining argument against its disclosure.

is specifically excluded by subsection (c).<sup>3</sup> *Id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address a governmental entity maintains for one of its officials or employees. Upon review, we find the e-mail address we have marked is not of the types specifically excluded by section 552.137(c) of the Government Code.<sup>4</sup> Accordingly, the governor must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to disclosure. We conclude the remaining marked e-mail addresses at issue, which are maintained by a governmental entity, may not be withheld under section 552.137.

In summary, the governor must withhold the information marked under section 552.110(b) of the Government Code. The governor must also withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to disclosure. The governor must release the remaining information at issue.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>3</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We also note Open Records Decision No. 684 authorizes governmental bodies to withhold an e-mail address of a member of the public under section 552.137 of the Government Code without the necessity of requesting an attorney general decision.

Ref: ID# 426692

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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