



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2011

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

OR2011-11915

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# 428088 (OOG# 237-11).

The Office of the Governor (the "governor") received a request for the most recent agreement between the Texas Enterprise Fund and Heliovolt, Inc. ("Heliovolt") and any related correspondence between Heliovolt and state officials since January 2010. You state the governor released a portion of the responsive information to the requestor. Although you take no position as to the public availability of the remaining responsive information, you state its release may implicate the proprietary interests of Heliovolt. Accordingly, you notified Heliovolt of the request and of the company's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *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 to raise and explain applicability of exception to disclosure under in certain circumstances). We have reviewed the submitted information.

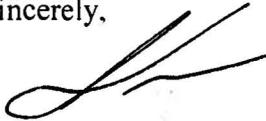
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Heliovolt explaining why any portion of the submitted information

should not be released. Therefore, we have no basis to conclude Heliovolt has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, third 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 (1990). Consequently, the governor may not withhold any of the submitted information on the basis of any proprietary interest Heliovolt may have in the information. Therefore, as no exceptions to disclosure have been raised, 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 428088

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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