



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2011

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

OR2011-13668

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# 431266 (OOG#s 305-11 and 327-11).

The Office of the Governor (the "OOG") received requests from two requestors for information relating to the cable television program "Top Chef." You inform us some of the requested information either has been or will be released. Although you take no position on the public availability of the submitted information, you believe the information may implicate the interests of Magical Elves, Inc. ("Magical Elves"). You inform us the OOG notified Magical Elves of these requests for information and of the company's right to submit arguments to this office as to why the submitted information should not be released.¹ We received correspondence from an attorney for Magical Elves. We have considered Magical Elves's arguments and reviewed the submitted information.

We note the OOG did not fully comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the

¹*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

governmental body to submit a copy of the request for information to this office no later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e)(1)(B). If a governmental body fails to comply with section 552.301, the information at issue is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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 (Tex. App.—Austin 1990, no writ). In this instance, the OOG did not provide this office with a copy of the second request for information.² Therefore, the information encompassed by the second request is presumed to be public under section 552.302. This statutory presumption can generally be overcome when 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). Accordingly, we will consider Magical Elves's claims under sections 552.110 and 552.137 of the Government Code for all the information at issue.

Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “commercial 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(a)-(b). Magical Elves contends some of the submitted information, including pricing information, should be withheld under section 552.110(b) of the Government Code. We note a claim under section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause substantial competitive harm). We also note the pricing aspects of a contract with a governmental entity are generally not excepted from disclosure under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Dept of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act exemption reason that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Having considered all of Magical Elves’s arguments and reviewed the information at issue, we find Magical Elves has not made the specific factual or evidentiary showing required by section 552.110(b) that release of the information at issue would cause the company substantial competitive harm. We therefore

²Our description of the second request is based on other information the OOG provided in requesting this decision.

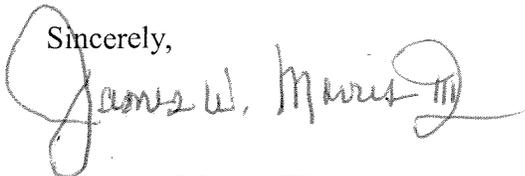
conclude the OOG may not withhold any of the submitted information under section 552.110 of the Government Code.

Section 552.137 of the Government Code states “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 public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov’t Code § 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 that a governmental entity maintains for one of its officials or employees. Likewise, this exception is not applicable to the cellular telephone and facsimile numbers Magical Elves has marked. We have marked personal e-mail addresses contained in the submitted information that do not fall within the scope of section 552.137(c). The OOG must withhold the marked e-mail addresses under section 552.137 of the Government Code unless the owner of an e-mail address has affirmatively consented to its public disclosure.³ The rest of 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

³We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

Ref: ID# 431266

Enc: Submitted documents

c: Requestors
(w/o enclosures)

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