



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2012

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County District Attorney's Office
401 Belknap
Fort Worth, Texas 76196-0201

OR2012-01068

Dear Ms Fourt:

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# 443167.

The Tarrant County District Attorney's Office (the "district attorney") received a request for the proposal submitted by ABLe Communications, Inc. ("ABLe") in response to request for proposals 2012-007.¹ Although you take no position as to whether the requested information is excepted under the Act, you state release of the requested information may implicate the proprietary interests of ABLe. Accordingly, you state you notified ABLe of the request for information and of its right to submit arguments to this office as to why its submitted information 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 an attorney for ABLe. We have considered the submitted arguments and reviewed the submitted information.

¹We note the district attorney sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

ABLE raises section 552.110(b) of the Government Code for some of the submitted information, which 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, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Upon review, we conclude ABLe has established that release of some of its customer information would cause it substantial competitive injury. Accordingly, the district attorney must withhold the information we have marked under section 552.110(b). However, because ABLe published its remaining customer information on its website, it has failed to demonstrate how release of this information would cause the company substantial competitive harm. Furthermore, we find ABLe has not made a specific factual or evidentiary showing that release of its remaining information would cause it substantial competitive injury. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Therefore, the district attorney may not withhold any of the remaining information under section 552.110(b) of the Government Code.

Section 552.136 provides, “[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.”² Gov’t Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Accordingly, the district attorney must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the district attorney must withhold the information we have marked under sections 552.110(b) and 552.136 of the Government Code. The district attorney must release the remaining information.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 443167

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. J. Benjamin Barlow
Attorney for ABLe Communications, Inc.
3815 Lisbon Street
Fort Worth, Texas 76107
(w/o enclosures)