



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2012

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

OR2012-01877

Dear Mr. Sterner:

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# 447881 (OOG No. 660-11).

The Office of the Governor (the "governor's office") received a request for Motiva Enterprises LLC's ("Motiva") original proposal to the Texas Enterprise Fund ("TEF"), TEF's evaluation of Motiva, Motiva's original and amended contract, and Motiva's compliance reports.¹ You state you will release most of the responsive information to the requestor. You also state the governor's office is withholding some of the responsive information in accordance with Open Records Letter No. 2011-14353 (2011). *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Although you take no position as to whether the remaining requested information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Motiva. Accordingly, you state you notified Motiva of the request for information and of its right to submit arguments to this office as to why the 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

¹The governor's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

explain applicability of exception in the Act in certain circumstances). We have received comments from Motiva. We have considered the submitted arguments and reviewed the submitted information.

Motiva argues its submitted salary information is excepted from disclosure under section 552.110(b) of the Government Code. 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.* § 552.110(b); Open Records Decision No. 661 (1999).

Upon review, we find Motiva has established the release of its salary information, which we have marked, would cause the company substantial competitive harm. Thus, the governor’s office must withhold this marked information under section 552.110(b) of the Government Code.² As no further arguments against disclosure are raised, the governor’s office 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 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

²As our ruling is dispositive, we need not address Motiva’s remaining argument against disclosure.

Ref: ID# 447881

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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