



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 10, 2012

Mr. Mark Fenner  
General Counsel  
Texas Racing Commission  
P.O. Box 12080  
Austin, Texas 78711-2080

OR2012-16219

Dear Mr. Fenner:

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# 467572.

The Texas Racing Commission (the "commission") received a request for the 2011 Financial Statements of four named companies. You state you have released most of the requested information to the requestor. Although the commission takes no position with respect to the public availability of the remaining responsive information, you state release of this information may implicate the proprietary interests of Gulf Coast Racing, L.L.C. ("Gulf Coast Racing"). Accordingly, you state, and provide documentation showing, the commission notified Gulf Coast Racing of the request and of the company's 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received correspondence from Gulf Coast Racing. We have considered the submitted comments and reviewed the submitted information.

Gulf Coast Racing claims the submitted 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 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

In advancing its arguments, Gulf Coast Racing relies, in part, on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The *National Parks* test provides that commercial or financial information is confidential if disclosure of information is likely to impair a governmental body’s ability to obtain necessary information in the future. *National Parks*, 498 F.2d 765. Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. See *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard for excepting from disclosure confidential information and requires a specific factual demonstration that release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. See ORD 661 at 5-6 (discussing enactment of section 552.110(b) by Seventy-sixth Legislature). Thus, the ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, in making a determination under section 552.110(b), we will only consider Gulf Coast Racing’s interest in withholding its information.

Gulf Coast Racing contends the submitted information is commercial or financial information, release of which would cause the company substantial competitive harm. Upon review, we find that Gulf Coast Racing has established that its submitted financial statement constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Thus, the commission must withhold the submitted information under section 552.110(b) of the Government Code.

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,

A handwritten signature in black ink that reads "Cynthia G. Tynan". The signature is written in a cursive, flowing style.

Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/akg

Ref: ID# 467572

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)