



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 16, 2012

Ms. Lisa M. Nieman  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2012-16471

Dear Ms. Nieman:

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# 468135 (DSHS File # 20692/2012).

The Department of State Health Services (the "department") received a request for any notifications provided to the department by Lotus LLC ("Lotus") or by a specified person regarding either of two license conditions. Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the proprietary interests of Lotus. Accordingly, you inform us, and provide documentation showing, you notified Lotus of the request and of the company's right to submit comments to this office as to why the requested information should not be released to the requestor. *See* 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 the Act in certain circumstances). We have received comments from Lotus. We have considered the submitted arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records

Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether any of the submitted information may be excepted under the Act.

Lotus raises section 552.110(b) of the Government Code to withhold some of its submitted information. 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.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm).

Lotus contends some of the company’s information is commercial or financial information, release of which would cause substantial competitive harm to the company. Upon review, we find Lotus has established the customer information we have marked constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Accordingly, the department must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find Lotus has not established any of the company’s remaining submitted information constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Accordingly, the department may not withhold any of the remaining information under section 552.110(b) of the Government Code.

We note the department has redacted certain e-mail addresses under section 552.137 of the Government Code pursuant Open Records Decision No. 684 (2009).<sup>1</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an e-mail address provided to a governmental body on a letterhead. *Id.* § 552.137(c)(4). In this instance, some of the e-mail addresses you seek to withhold are contained on Lotus’s letterhead. Because those e-mail addresses were provided to the department on a letterhead they are specifically excluded by section 552.137(c)(4). As such, those e-mail addresses may not be withheld under section 552.137 of the Government Code and must be released. The remaining e-mail addresses you have redacted and the additional e-mail addresses we have marked must be withheld under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. *See id.* § 552.137(b).

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

In summary, the department must withhold the information we have marked under section 552.110(b) of the Government Code. Except for the e-mail addresses contained in Lotus's letterhead that are specifically excluded by section 552.137(c) of the Government Code, the department must withhold the e-mail addresses you have redacted and the additional e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release. The remaining 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](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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 468135

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)