



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2013

Ms. Haley Turner
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2013-00123

Dear Ms. Turner:

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# 473755.

The Region 13 Education Service Center (the "center"), which you represent, received a request for copies of the Supplemental Educational Services ("SES") applications denied for the 2012-2013 school year, all attachments to SES applications both approved and denied for the 2012-2013 school year, copies of documents created in reviewing SES applications for that year, and a copy of the roster of people who graded the 2012-2013 SES applications. Although you take no position on whether the requested information is excepted from disclosure, you state its release may implicate the proprietary interests of numerous third parties (the "SES Providers"). Accordingly, pursuant to section 552.305 of the Government Code, you state you have notified the SES Providers of the request and their right to submit arguments to this office. *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 arguments from A Better Grade Tutoring, LLC ("A Better Grade"), Doctor Dora's Remedies, dba Academic Excellence Tutoring ("Academic Excellence"), A.P.C., Inc ("APC"), Advance Professional Consultants, LLC ("Advance"), EducationWise, Elite Academic Solutions ("Elite"), McKinney Carey, Inc. ("McKinney"), MJM South Texas Sylvan Learning, Inc. ("Sylvan MJM"), Educate South Texas of Brownsville, Ltd. Sylvan Learning Center ("Sylvan Brownsville"), Educate South Texas of McAllen, Ltd. Sylvan Learning Center ("Sylvan McAllen"), an attorney for Innovative Educational Programs, LLC ("IEP"), and an attorney for Tutors with Computers, LLC ("TWC"). We have considered all of the submitted arguments and reviewed the submitted information.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, most of the notified SES Providers have not submitted to this office their reasons explaining why the requested information should not be released.¹ Consequently, these SES Providers have

¹This office has not received arguments from the following: 1st Place Tutoring, New Mexico Community Faithlinks, Inc., #1 in Learning Online, Inc., + Writing & Reading Specialists, 1:1 Online Tutoring Services, 1 on 1 Academic Laptop Tutoring, 1 on 1 Education, Inc., 1 Stop Education, Inc., 1 to 1 Computer Tutoring LLC, 1 To 1 Tutor, LLC, 1st in Tutoring, 1st Tutoring, LLC, 3 Commas Tutoring LLC, 5 Smooth Stones Educational Leadership Services, 24 Hours Tutoring LLC, 100 Scholars, 100+ Tutoring LLC, 121 Tutor, LLC, 24/7 Educate Online, A3-All About Academics, LLC, A to Z In-Home Tutoring, A Better Tomorrow Education, A Tree of Knowledge Educational Services, Inc, A.S.P.I.R.E. Learning Organizations, A+ Achievers, Inc., A+ Learning Academy, Inc., A+ Tutors For Scholars, Inc., Aaron's Learning Center, LLC, AB Christian Learning Center, Above & Beyond Learning, Inc., Academia de Servicio de Tutoria, Academic Advancement, Academic Coaches, LLC, Academic Myriad, Academic Realities, Inc., Academic Tutoring Service, #1 Academics On Line, Accelerated Based Basic Education, dba ABBE, Accuracy Temporary Services, Inc. dba ATS Project Success, Achievement Matters, Inc., Achieving Intellectual Minds, LLC., Adaptive Learning, LLC dba Mindspark, Agile Connections, LLC, AIM Truancy Solutions, Alexis M. Services, LLC dba Alexis Math Services, All Kidz Tutoring, Allegiance Learning Solutions, LLC, AllStars After School Club, LLC, Alpha Academy Tutorial Center Inc., Alpha Visionaries, Inc., AlphaBEST Education, Inc., Alternatives Unlimited, Inc., Ambatshe Lengua-Mutamba dba Cherub's Corner Tutoring Center, American Pearl Inc., American Rising Stars, Inc., Andele Tutors, Inc., Anthropolog(i) Tutors, Apex Academics, LLC., APlus#1 Learning Solutions, Inc. dba A+ Learning Solutions, Apple Tree Tutoring Service, ATeenchoice, LLC, Athena Educational Institute, LLC, Austin Community College District, Avancetutors LLC, Avenue Academy, Be A Champion, Inc., Beacon Hill Preparatory Institute, Inc., Bedrock Educational Services Corporation dba Bedrock Academy, Believe In You, LLC, Bethlehem Baptist Church dba The Bethlehem Academy, BlazinBrook Management, BlazinBrook Preparatory School of the Artz, Blue Ivy Carter Learning Resources, Boggle The Mind, Boost Academy, Born to Be Great II, Brain Hurricane, LLC, Appletree Learning LLC dba BrightStar Online, Brilliant Brains Academy Inc., Broaden Star LLC, BT Math Tutors, BTTX LP dba Babbage Net School, BWISE, Career Launcher USA, Inc. dba POWERMath, Catapult Learning West, LLC dba Catapult Learning, Citizen Schools, Inc., Club Z! In-Home Tutoring Services, Inc., College Smart Services LLC, Confidence Music, Inc. dba Confidence Education Group, Confidence Music, Inc., Connie Irlbeck-SES-TX, Cranium Maximus, LLC, CRMG Services, LLC, Crown Tutoring, Inc., Datamatics, Inc. dba Achieve HighPoints, Brave The Elements dba The Children's Carousel Academy, The Children's Carousel Academy, LLC dba Phenomenal Academic Student Success, P.A.S.S.-SES, Debbie Cannon dba Math...You can do it, I can help, Digital Network Group dba Kinetic Potential Scholars, Diverse Links dba Diverse Learning, Inc., Donald Emanuel, Added Value, D-Versity Solutions Inc., E3-Educators Engaging Effectively, LLC, Edinburg Consolidated Independent School District, Educate Burleson, LLC dba Sylvan Learning Center- Burleson, Educate MidCities, LLC dba Sylvan Learning Center-Arlington, Educate Online, Inc., Educate Southlake, LLC dba Sylvan Learning Center-Southlake, Education Advantage!, LLC, Education Beyond Frontiers LLC, Education Futures Corp., Education Matters, LLC, Educational Services of Augusta dba Flexible Educational, Educator Resources, Inc., Edutainment Learning, EduTemps Staffing Solutions, LLC, Eduwizards, Inc., ELA Corporation dba General Educational Academy, Emergent Learners, EMPOWERING AMERICA'S FUTURE, Erica Anthony dba Escalada Education Co., eTutorsZone, LLC, Expect Success Tutoring, LLC, Fasttrack Learning, LLC, Focus Care, Inc. dba Focus EduVation Inc., Foremost Tutors, Fostering Stars Learning and Resource Center, Inc., Fred Taylor Foundation, Inc., Galaxy Learning LLC, Gateway to Excellence dba Gateway, Giadolor Holdings, Inc. dba Successful Math and Reading Tutors, Glad2teach USA, Global Partnership Schools, Gomotion Enterprises, LLC dba Tutor Doctor, Goodwin Unity Group, Inc. dba Tutoring Club-Pearland, Grade Cracker LLC dba 24horas de Tutoria, Greenlight Tutoring, Inc., Group Excellence, Ltd., Helping Hands Tutoring, LLC dba Helping Hands Tutoring, Highpoint Academics LLC, HLR Foundation dba

provided this office with no basis to conclude that their responsive information is excepted from disclosure. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial

RYLP, Hope Tutoring Services, Inc., I Am Learning, I Can Achieve, Inc., iGlobal Educational Services, Ignio Enterprises LLC Powered by Sylvan Learning Centers of Texas, Imagine Learning, Inc., Innovadia LLC, Institucion Educativa NETS (USA), LLC, It's Just In Time Services, Jair Learning, LLC, JCP Ascension Powered by Sylvan Learning Centers of Texas, Jet Learning Laboratory, Inc., JL Hodge Consulting, LLC dba Educated Leaders, Joseph J. Dimas dba Academic Solutions of Texas, Judson Independent School District, Jump Start Learning Center, K. Stearns Enterprises, LLC dba Sylvan Learning Center of Wichita Falls, Kelley Carter dba Wellspring Education, Inc., Kids Playground and Learning Center, Know It All Tutoring Service, Knowledge Island Inc., Knowledge to Succeed, Knowledge Experts, LLC, dba Click2Tutor, La Villa Independent School District, Learning4Today Co., Learning Ladder Inc. dba Achievement with Learning Ladder, Inc., Learn It Systems, LLC, Legion Academics, Make Ends Meet, Making All School Time Engaging and Rewarding, Inc. dba MASTER, Inc., Markem, Inc. dba A+ Markem, Math Think, Inc. dba Math Power, Mathmobile Tutorials, LLC, Mathew 634, Inc. dba Tutoring Club of League City/Friendswood, Melissa Keeton dba MLK Tutoring Services, Mema Inc. dba Sylvan Learning Center Dallas, Minerva, Inc. dba Emerson Academy Preparatory Development Team, MMT SES TX Inc. dba Mobile Minds Inc., Mobile Collegiate Tutorial Service, Monique Carter dba MC2 Tutoring, Motivated Learning Centers, LLC dba ACE-IT!/Sylvan Learning Centers of Houston, Moving Forward Learning Academy, Much Success Tutoring Services, Multicultural Literacy Center, MyMathNet, Inc., Napier for Men, Incorporated dba NFM, Incorporated, Nasus Group, Inc. dba Sylvan Learning Center, New Era Institute of Learning, LLC, NonPublic Educational Services, Inc. dba NESI, OAK One of a Kind Corporation, On the Third Day Christian Ministries, Inc. dba Laureate Learning Center, Inc., One on One Learning Center, LLC, Panoramic Education, LLC, Polk Institute of Excellence, Priority: My Education, LLC, Project One Focus, Promise Tutorial, Protecting Our Children Outreach Ministry, RaRa Foundation, Inc., Rayla, Read, Write, & Create, Inc., Reading 2 Improve, Reading Partners, Resolution Source, LLC, Results Mentoring, Rising Star Education, LLC, Rocket Learning Partners, LLC dba Rocket Learning, S & D Consulting, Sheila Williams Lyons dba Acknowledge Me Now, Shout Church, Inc., Signum Educational Services, SLC Educators, Inc. dba Sylvan Learning Center, Sol Educational Services dba Sol Case Management, Songbird Multimedia and Performing Arts Foundation Inc., Southwest Word of Faith SDA Church, Inc. dba ALL ABOUT U, Spanish Learning Center dba SLC Reading and Math, Square One Tutoring, Star Learning, LLC, Striving 4 Excellence Tutoring, Inc., Studentnest, Inc. dba studentnest.com, Successful Student Coaching, Summit Learning Services, Inc., Sure Prep Learning, LLC dba Sure Prep Learning, Sylvan Learning Centers of Amarillo, Inc., Sylvan Learning Centers of Austin, LLC, Synergist Consulting, LLC dba School Advisory Services, System Xcellence, Inc. dba Academic Xcellence, Tabitha Fadeley dba Effective Educational Enrichment Group, Tailor Made Instruction, TC Tech, LLC dba TC Tech Tutor, Texas Educational Solutions dba Educational Software Solutions of Texas, Texas Southern University, The Achievement Academy, LLC, The DeJohn Group, LLC, The Happy Tree Child Development Center, Inc., The Ingenuity Center, The Little Genius Private Learning Center, The National Lighthouse Youth Foundation Incorporated dba The National Lighthouse Foundation Math and Reading Wizards, Tools of Empowerment Educational Services, LLC, Top Flight Education Inc., Tower Educational Consulting Group dba Tower Education, Train Up A Child dba The Homework Mastery Center, TREE4S, Inc., Tri-Level Tutoring, LLC, Trinity Home Health Care dba Protecting Our Children Outreach Ministry, Trinity M, LLC Powered by Sylvan Learning Centers of Texas, Trinity River Mission, Turning Points Tutorial Systems, Tutor Computer Connect, Tutor Pace, Inc., TutorCo, LLC, Tutorial Services, Tutors On Wheels, Inc., Tutors with Tech, LLC, Ultimate Success Learning, Urquidez Educational Consulting dba Academic Consulting Services, Vanguardia Tutoring, LLC, Variations Educational Services, LLC, Vast Tutoring, LLC, Walter Smith, Ware Educational Consulting Firm, Inc., Westfield Educational Consultants, Where The Teachers Are, Inc., Wise Links, LLC dba Champions Mind, Wonder-Space Mobile, LLC, WREM Literacy Group, Inc., Xandra & Xander, LLC dba Texas Tutor Professionals, Yancy Life Transition Center, Yo Miss! Can U Teach Me?, Youth Advocate Programs, Inc., Zenith Learning dba Rain Drop Foundation, Inc., and Zenith Mobile Prep, LLC

competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude that the center may not withhold any portion of the submitted information relating to the SES Providers who did not submit arguments to this office on the basis of any third party proprietary interest.

Elite asserts that its information was submitted to the center with an expectation of privacy and a presumption of confidentiality. However, information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

A Better Grade, Academic Excellence, Advance, APC, EducationWise, Elite, IEP, Sylvan Brownsville, Sylvan McAllen, Sylvan MJM, and TWC argue that their information is excepted by section 552.110 of the Government Code.² Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(a)–(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates

²Elite and EducationWise also argue against the disclosure of their approved SES applications for the 2012-2013 school year, but that information is not responsive to the request. This ruling only addresses the responsive information that the center submitted to this office. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.³ This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

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 (1999).

Having carefully reviewed all of the submitted arguments, we conclude that Sylvan Brownsville, Sylvan McAllen, and Sylvan MJM have established that their lesson plans are trade secrets. Accordingly, the center must withhold this information, which we have marked, under section 552.110(a) of the Government Code. However, we find A Better Grade, APC, Academic Excellence, EducationWise, Advance, and Elite have failed to demonstrate that any portion of their information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim for their information; therefore, the center may not withhold any portion of the information pertaining to these companies under section 552.110(a).

³The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

In advancing their section 552.110(b) arguments, Advance, APC, Academic Excellence, and Elite all rely, 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 at 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 to be applied and requires a specific factual demonstration that the 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). 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, we will consider only the SES Providers' interests in the submitted information.

Upon review, we find APC, Academic Excellence, and TWC have demonstrated that substantial competitive harm would result from the release of portions of their information. Therefore, we have marked portions of the submitted information relating to APC, Academic Excellence, and TWC that the center must withhold under section 552.110(b) of the Government Code. However, we conclude that A Better Grade, Academic Excellence, APC, EducationWise, Advance, Elite, IEP, Sylvan Brownsville, Sylvan McAllen, Sylvan MJM, and TWC have not demonstrated how release of the remaining information relating to their companies would cause them substantial competitive harm. Therefore, the center may not withhold any of the remaining information under section 552.110(b). See Open Records Decision Nos. 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code. The submitted information contains corporate tax return information.⁴ Prior decisions of this office have held section 6103(a) of title 26 of the United States Code

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, . . . tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). Upon review, we find the center must withhold the 1120 form we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

McKinney argues that its information is private. Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). However, the financial information of a company that is an individual or sole proprietorship is confidential under common-law privacy. See *Morton*, 338 U.S. at 652; ORD 620.

Although McKinney raises privacy for its financial information, we note this information pertains to a business and not an individual. Therefore, none of McKinney's information

may be withheld on the basis of common-law privacy. However, we have marked portions of the remaining information that are protected by section 552.101 in conjunction with common-law privacy. Therefore, the center must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, 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." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Accordingly, the center must withhold the information we have marked under section 552.136.

Section 552.137 of the Government Code 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). The e-mail addresses we have marked are not specifically excluded by section 552.137(c). As such, these marked e-mail addresses must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release.⁵ *See id.* § 552.137(b).

We note portions of the submitted information appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Thus, in releasing the submitted information, any information protected by copyright may only be released in accordance with copyright law.

In summary, the center must withhold the trade secret information we have marked under section 552.110(a) of the Government Code. The center must also withhold the financial information we have marked under section 552.110(b) of the Government Code. The center must withhold the corporate tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, as well as the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The center must also withhold the access

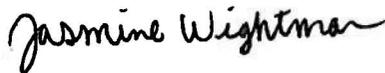
⁵Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

device numbers we have marked under section 552.136 of the Government Code and the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released; however, any information subject to copyright may only be released in accordance with copyright law.⁶

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,



Jasmine D. Wightman
Assistant Attorney General
Open Records Division

JDW/sdk

Ref: ID# 473755

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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⁶We note the remaining information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

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