



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 11, 1997

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR97-1365

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106721.

The City of Austin (the "city") received a request for "all documentation submitted by Kirkwood & Hunter Enterprises and Electrical Supplies, in their pursuit and receipt of an MBE certification" and "all information submitted by Susan Spencer to win a contract with the city, as well as the contract." You have released some of the requested records. Pursuant to sections 552.301 and 552.305, you have submitted the remaining information for our review to determine whether the records are excepted from disclosure under sections 552.101 and 552.110 of the Government Code.

Pursuant to section 552.305, we notified the third parties whose interests are at stake to provide reasons why the information should be withheld. Because the third parties did not respond to our notification, we have no basis on which to conclude that section 552.110 applies to the information. Open Records Decision Nos. 639 (1996) at 4 (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 competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish a prima facie case that information is trade secret). Therefore, the city may not withhold the information under section 552.110.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute and information protected by common-law or constitutional privacy. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. The federal tax return information must be withheld from disclosure wherever it appears in the material submitted to this office.

The submitted information includes social security numbers that may be excepted from disclosure under section 552.101. A social security number may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information that you have provided, we are unable to determine whether the social security numbers at issue here are confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number contained in these documents, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 106721

Enclosures: Submitted documents

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