



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 6, 1998

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

OR98-0048

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# 111350.

The City of Austin (the "city") received a request for "the RFP for the Convention Center Sales #GB 953000149 and the existing contract for Capital City Chamber #S-0035-96." You ask this office whether the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Because the property and privacy rights of a third party may be implicated by the release of some of the requested information, this office notified Capital City Chamber of Commerce ("Capital City") of this request and of its opportunity to claim that the information at issue is excepted from disclosure. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Capital City did not respond to our notice.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In this instance neither the city nor Capital City has demonstrated that the requested information constitutes information protected by section 552.110. 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 prima facie case that information is trade secret). Therefore, the city may not withhold the information under section 552.110.<sup>1</sup>

You also assert that the information may be protected by section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have presented no statutory or other legal authority which deems this information confidential by law. This section also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. After reviewing the submitted material, we do not believe that any of the information is protected by common-law privacy. Therefore, section 552.101 does not except the requested information from required public disclosure. Accordingly, the requested information must be released.

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 on as a previous determination regarding any other records.* If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/alg

Ref.: ID# 111350

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<sup>1</sup>Although the some of the submitted information is identified as confidential, we note that, generally, information is not confidential under the Open Records Act merely because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

Enclosures: Submitted documents

cc: Mr. Ken Ballage  
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(w/o enclosures)

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Capital City Chamber of Commerce  
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