



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 10, 1998

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR98-1430

Dear Mr. Toscano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115628.

The City of Dallas received a request for "financial information used by the City of Dallas to determine the amortization period related to BDA 978C-106." You submitted to this office information responsive to the request. You state that the corporation that supplied the financial information used by the city objects to release of the information. You assert no objections to disclosure, but have asked this office to determine whether the information at issue is confidential. Pursuant to section 552.301 of the Government Code, this office provided the corporation whose records are at issue an opportunity to submit reasons as to why the information should be withheld from disclosure.

The attorney for the corporation asserts, in correspondence to the city, that the financial information provided by the corporation is private and confidential. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). There is no privacy interest in financial information about a business. Open Records Decision No. 192 (1978) at 4 (right of privacy protects feelings of human beings, not property, business or other monetary interests); *see* Open Records Decision No. 373 (1983) at 3 (privacy interest in financial information relating to individual). Thus, the information about the corporation may not be withheld from disclosure under section 552.101.

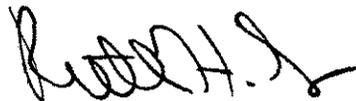
We note that two of the submitted documents concern a lease agreement between the corporation and an individual. Information is protected under a common-law right of

privacy when the information is (1) 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. Information that is protected from disclosure under a common-law right of privacy may also include financial information about individuals. In Open Records Decision No. 373 (1983) at 3. We conclude that the rental and deposit payments outlined in the lease agreement are protected from disclosure, as release would provide private financial information about an individual.

It appears that the corporation may be asserting that the financial information is protected from disclosure under section 552.110 of the Government Code, which protects from disclosure commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. Open Records Decision No. 592 (1991) at 2. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770. A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 (1996) at 4. To prove substantial competitive harm, the party seeking to prevent disclosure 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. *Id.* The corporation whose records are at issue has not provided information to show that section 552.110 is applicable. Thus, the records at issue may not be protected under section 552.110.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 115628

Enclosures: Submitted documents

cc: Ms. Roxan Staff
6964 Tokalon
Dallas, Texas 75214
(w/o enclosures)