



April 27, 2000

Mr. Robert A. Schulman
Schwartz & Eichelbaum, P.C.
700 North St. Mary's, Suite 1850
San Antonio, Texas 78205

OR2000-1652

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134706.

The United Independent School District (the "district"), which you represent, received a request for information submitted by the vendor the district selected in response to the district's Request for Proposal No. 99-092 for moving services (the "RFP"), Orozco's, Inc. You claim that segments of the requested information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. You also inform us that the requested information may contain the proprietary or property interests of Orozco's, Inc. which are protected from disclosure under section 552.110. You have provided this office a copy of the notification letter that you sent to Orozco's, Inc. pursuant to section 552.305 of the Government Code. We have considered the exceptions you raise and reviewed the submitted information.

Section 552.305(d) of the Government Code requires the district to notify the vendor of the request for an attorney general decision. *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 Public Information Act in certain circumstances). In order for this office to determine that information may be withheld from disclosure under section 552.110(a), a party must establish a prima facie case that the information constitutes a trade secret. Open Records Decision No. 552 at 3 (1990). Furthermore, to prevent disclosure of commercial or financial information under section 552.110(b), a 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. *Id.* at 5.

Orozco's, Inc. did not submit to this office its reasons explaining why the requested information should not be released. Therefore, we have no basis to conclude that the responsive information is excepted from disclosure under section 552.110(b). See Gov't Code § 552.110(b).

You argue that the financial information contained in Orozco's, Inc.'s bonding and insurance information is protected from disclosure under section 552.101. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to information made confidential by the common law right to privacy. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.* Financial information concerning an individual is in some cases protected by a common law right of privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." See Open Records Decision No. 373 at 3 (1983). However, Orozco's, Inc. is a corporation and not an individual. See Open Records Decision No. 523 (1989). Corporations do not have a right to privacy. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950), cited in *Rosen v. Matthews Const. Co.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990); see Open Records Decision Nos. 620 (1993), 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings, and does not protect evaluation report on private college). The right of privacy is intended to protect the feelings and sensibilities of human beings; it does not protect information about private corporations. *Id.* Therefore, the bonding and insurance information may not be withheld pursuant to section 552.101 of the Government Code.

Finally, information in contracts entered into by governmental bodies is generally public information unless deemed confidential by law as provided in section 552.022(a)(3) of the Government Code:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Therefore, as we cannot conclude that the responsive information is excepted from disclosure under section 552.110(b), and as we find that the Orozco's, Inc. has no common law right to privacy in the information, we conclude that the district must release the requested information to the requestor with the following exception. We agree with your contention that the vehicle identification number information is made confidential under section 552.130. Thus, the district must not release the vehicle identification number information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

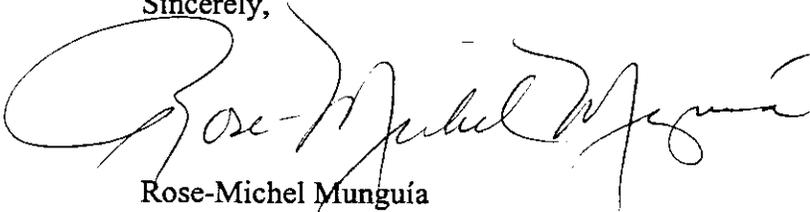
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía". The signature is fluid and cursive, with a large initial "R" and "M".

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 134706

Encl. Submitted documents

cc: Mr. Reynaldo Diaz, Jr.
1615 Broadway
San Antonio, Texas 78215
(w/o enclosures)

Mr. Jose Orozco, President
Orozco's Inc.
7200 North Santa Maria Avenue
Laredo, Texas 78045