



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2004

Mr. David Caylor
City Attorney
City of Irving
825 W. Irving Blvd.
Irving, Texas 75060

OR2004-3703

Dear Mr. Caylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200943.

The City of Irving (the "city") received two requests for a specified proposal submitted to the city by ADS-Telecom, Inc. ("ADS"). Additionally, one of the requestors seeks the city's contract with ADS. The city takes no position with regard to the release of the requested information. However, you have notified ADS, an interested third party, of the request for information pursuant to section 552.305 of the Government Code. *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 section 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). The city has submitted the information at issue to this office. We also received correspondence from ADS. We have considered its arguments and reviewed the submitted information.

ADS asserts that its financial information is excepted from disclosure under 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." This section encompasses the doctrine of common law privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Prior decisions of this office have found that personal financial information not relating to a

financial transaction between an individual and a governmental body is protected by common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Having reviewed the submitted information, we find that any financial information concerns a company rather than an individual and is therefore not protected by common law privacy. *See generally* 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) (corporation has no right to privacy). Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code and common law privacy.

ADS also asserts that its financial information is excepted from disclosure under section 552.104 of the Government Code. However, section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). Section 552.104 excepts information from disclosure if a governmental body demonstrates that the release of the information would cause potential specific harm to the governmental body's interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). The city has not argued that the release of submitted information would harm the city's interests in a particular competitive situation. Therefore, the submitted information may not be withheld pursuant to section 552.104 of the Government Code. As ADS makes no additional arguments, the city must release the submitted information.

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 200943

Enc: Submitted documents

c: Mr. Sherman Hennington III
SBC Public Communications
2522 109th Street, Floor 1
Grand Praire, Texas 75052
(w/o enclosures)

Mr. Maurice "Mo" Mascorro
V.P. Sales
Infinity Networks, Inc.
P.O. Box 30137
Austin, Texas 78755
(w/o enclosures)

Mr. Mario Nagar
Regulatory Officer
ADS-Telecom, Inc.
595 Round Rock West Drive, Suite 604
Round Rock, Texas 78681
(w/o enclosures)