



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2004

Mr. Willam P. Chesser
City Attorney
City of Brownwood
P. O. Box 1389
Brownwood, Texas 76804

OR2004-6923

Dear Mr. Chesser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207157.

The City of Brownwood (the "city"), which you represent, received a request for the cable franchise application for Harris Broadband, Inc. ("Harris"). You state that some information has been provided to the requestor. You claim that some of the requested information may be excepted from disclosure under section 552.110 of the Government Code, although you take no position as to whether the submitted information is so excepted. You state that you have notified Harris of this request. *See* Gov't Code § 552.305(d); *see also* 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 to disclosure under Public Information Act ("Act") in certain circumstances). You have forwarded to this office correspondence from Harris in which Harris objects to the release of certain information. We will treat this correspondence as a response under section 552.305 of the Government Code. *See* Gov't Code § 552.305. We have considered the submitted arguments and reviewed the information submitted by the city.

Harris first indicates that the submitted information is confidential under the doctrine of common-law privacy. Information is excepted under section 552.101 of the Government Code¹ in conjunction with common-law privacy when it (1) contains highly intimate or

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. *See* Gov't Code § 552.101.

embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. After reviewing the submitted information, we find it is not protected by common-law privacy, and therefore may not be withheld on that basis. Furthermore, we note that only individuals, and not corporations, have a right to privacy. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); see Open Records Decision No. 192 (1978) (stating that right of privacy protects feelings and sensibilities of human beings). We therefore conclude that no portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code on this basis.

Harris also raises the doctrine of constitutional privacy, which is also incorporated by section interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" that include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy and includes only information that concerns the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village*, Texas, 765 F.2d 490 (5th Cir. 1985)). We have reviewed the submitted information and conclude that none of it comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. See Open Records Decision No. 455. We therefore find that none of the submitted information may be withheld on the basis of constitutional privacy.

Harris also indicates that its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(b). An entity will not meet its burden under section 552.110(b) by a mere conclusory assertion of a possibility of commercial harm. Cf. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). An interested third party raising section 552.110(b) must provide a specific factual or evidentiary showing that substantial competitive injury would likely result from disclosure of the requested information. See Open Records Decision No. 639 at 4 (1996) (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).

Based on our review of Harris's arguments and the submitted information, we find that Harris has failed to adequately demonstrate that any portion of the submitted information constitutes commercial or financial information, the release of which would cause Harris substantial competitive harm. *See generally* Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors), 509 at 5 (1988) (stating that because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 319 (1982) (finding information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under predecessor to section 552.110), 184 (1978). Accordingly, we conclude that the city may not withhold any portion of the submitted information under section 552.110(b) of the Government Code. Because there are no other claimed exceptions to disclosure, we conclude the submitted information must be released.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 207157

Enc. Submitted documents

c: Karen McMillan
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(w/o enclosures)

Harris Broadband, Inc.
c/o William P. Chesser
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