



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2006

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2006-11280

Dear Ms. Valkavich:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 260265.

The City of San Antonio (the "city") received a request for a copy of the Request for Qualifications ("RFQ") pertaining to a proposed Grand Prix Race, any supporting documents related to this RFQ, and documents submitted by Champ Car Racing/HollyHills Motor Sports, L.L.C. ("HollyHills") in response to the RFQ. You state that the city has provided a copy of the RFQ to the requestor. Although you indicate that some of the remaining responsive information may be excepted from disclosure under sections 552.101, 552.104, 552.105, 552.110, 552.113, and 552.131 of the Government Code, you make no arguments regarding these exceptions. However, you believe that release of this information may implicate the proprietary interests of HollyHills. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the city notified HollyHills of the request for information and of its right to submit arguments explaining why the requested information should not be released. *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 in certain circumstances). In its correspondence to this office, HollyHills claims that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.104, 552.110(b), and 552.131 of the Government Code. We have reviewed the submitted arguments and the submitted information.

Initially, HollyHills states that it labeled some of its information confidential and indicates it should be treated as such. We note that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through a contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987). Consequently, unless the information at issue falls within an exception to disclosure, it must be released.

Next, HollyHills claims that the requested information should be withheld from disclosure under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. Section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the city does not seek to withhold any information pursuant to section 552.104, this section is not applicable to the information at issue. *See* Open Records Decision No. 592 (1991) (governmental body may waive section 552.104). Accordingly, the city may not withhold any portion of the information at issue pursuant to section 552.104 of the Government Code.

HollyHills claims that the information in Tabs E and G of its proposal is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "commercial 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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Upon review of HollyHill's arguments and the information at issue, we find that the company has established that the information at issue is excepted from disclosure under section 552.110(b) as commercial or financial information the release of which would cause the company substantial competitive harm under section 552.110(b).¹

HollyHills argues that the information in Tabs C and D is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.² The doctrine of common law privacy excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable

¹ As our ruling is dispositive, we do not address HollyHill's argument under section 552.101 for the information in Tab G or section 552.131 for the information in Tabs G and E.

² 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.

person, and (2) not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common law privacy. See Open Records Decision No. 600 (1992). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Record Decision 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). Furthermore, the doctrine of common law privacy protects the privacy interests of individuals, not of corporations or other types of business organizations. See 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 *U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). None of the information at issue is confidential under common law privacy, and therefore this information may not be withheld under section 552.101 on that ground.

In summary, the city must withhold the information in Tabs G and E under section 552.110(b) of the Government Code. The remaining information must be released 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).

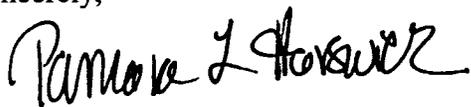
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 260265

Enc. Submitted documents

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