



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2007

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
For the City of Hutto
309 East Main Street
Round Rock, Texas 78664-5246

OR2007-00342

Dear Ms. Camp-Lee:

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# 268906.

Williamson County (the "county"), which you represent, received a request for a "[c]opy of all response/proposal materials" submitted by Clawson Disposal, Inc. (Clawson) in response to a specified request for proposals. You state that you have released some of the responsive information to the requestor. You claim that the submitted information may contain proprietary information subject to exception under the Act, but make no arguments and take no position as to whether the information is so excepted. Pursuant to section 552.305 of the Government Code, you have notified Clawson of the request and of its right to submit arguments to this office as to why the 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 under the Act in certain circumstances). We have received correspondence on behalf of Clawson.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that Clawson has submitted comments arguing that the submitted bid 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

¹Although Clawson argues that the submitted information may be excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it body believes that a person's privacy or property interests may be involved. *See Gov't Code* § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

to a competitor or bidder.” Gov’t Code § 552.104. However, 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 county did not submit any arguments in support of withholding any information pursuant to section 552.104, the county may not withhold any of Clawson’s information pursuant to section 552.104 of the Government Code. *See* Open Records Decision No. 592 (1991) (governmental body may waive section 552.104).

Clawson states that some of its information is 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, we understand Clawson to claim that some of its information 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 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.

²Section 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.

We note that the submitted information contains Texas motor vehicle record information.³ Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. Therefore, the Texas motor vehicle record information we have marked must be withheld pursuant to section 552.130 of the Government Code.

We also note that section 552.136 of the Government Code is applicable to some of the remaining submitted information. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The county must, therefore, withhold the information we have marked pursuant to section 552.136 of the Government Code.

In summary, the county must withhold the information we have marked pursuant to sections 552.130 and 552.136 of the Government Code. The remaining submitted 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

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

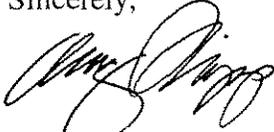
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/krl

Ref: ID# 268906

Enc. Submitted documents

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