



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2008

Ms. Pegi Wolbrueck  
Workforce Solutions-Brazos Valley  
3991 East 29<sup>th</sup> Street  
P.O. Drawer 4128  
Bryan, Texas 77805

OR2008-16324

Dear Ms. Wolbrueck:

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# 328758.

Workforce Solutions-Brazos Valley ("Workforce") received a request for proposal responses from two named companies. We understand you to assert that portions of the submitted information are excepted from disclosure under sections 552.101, 552.104, and 552.147 of the Government Code. You inform us that you have released some of the requested information to the requestor. You state that you have informed Arbor E&T ("Arbor") and Workforce Network, Inc. ("WNI") of the request and of their opportunity to submit comments to this office. *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 the applicability of exception to disclosure under Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

We note that you have marked the submitted information under section 552.104 of the Government Code. Further, we note that WNI states, in the documents themselves, that its information is confidential under section 552.104. Thus, we understand both the city and WNI to raise section 552.104. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *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). Accordingly, section 552.104 requires a showing by the governmental body of some actual or specific harm to its interests

in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990), *see also* Gov't Code § 552.301(e)(1)(A) (governmental body has the burden of proving that the requested information must be withheld under the stated exception). In this instance, you have provided no arguments explaining how section 552.104 is applicable to the information at issue. Thus, no portion of the submitted information may be withheld on this basis. *See* ORD 592.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 600 (1992), 545 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to be generally those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common-law right to privacy). Workforce must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find that none of the remaining information is highly intimate or embarrassing or of no legitimate public concern. Thus, none of the remaining information may be withheld on the basis of common-law privacy.

Next, section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Workforce may withhold the social security numbers in the submitted information under section 552.147.<sup>1</sup>

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Arbor or WNI explaining why any portion of the submitted information should not be released to

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<sup>1</sup> We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

the requestor. We thus have no basis for concluding that any portion of the submitted information would implicate Arbor's or WNI's proprietary interests, and none of it may be withheld on that basis.<sup>2</sup> *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note that the remaining information contains insurance policy numbers. Section 552.136 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(b). This office has determined that insurance policy numbers are access device numbers for the purposes of section 552.136. Workforce must withhold the insurance account numbers we have marked under section 552.136 of the Government Code.

In summary, Workforce must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the insurance policy numbers we have marked under section 552.136 of the Government Code. Workforce may withhold the social security numbers in the submitted information under section 552.147 of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

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<sup>2</sup>We note that information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976).

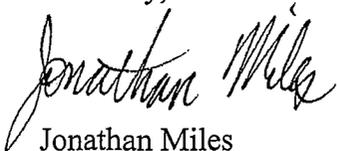
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 328758

Enc. Submitted documents

c: Requestor  
(w/o enclosures)