



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2010

Mr. William R. Pemberton
P.O. Box 1112
Crockett, Texas 75835

OR2010-00595A

Dear Mr. Pemberton:

This office issued Open Records Letter No. 2010-00595 (2010) on January 12, 2010. In that ruling we determined, among other things, that because MBC Management and Consulting, L.L.C. ("MBC") did not submit comments to this office explaining why its requested information should not be released, we had no basis to withhold the information. We, therefore, ordered the release of MBC's information. However, we understand MBC was not notified of the request for information until January 11, 2010. On January 13, 2010, MBC submitted comments explaining why its information should not be released. We understand MBC is asking this office to reconsider Open Records Letter No. 2010-00595. We have considered MBC's request and will reconsider the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on January 12, 2010. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act).

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# 377049.

The Crockett Economic and Industrial Development Corporation (the "corporation"), which you represent, received a request for all information pertaining to a named individual's company. You state the corporation has provided some information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.131 of the Government Code. You indicate the submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified MBC of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See id.* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to

disclosure under certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date of this request. The corporation need not release non-responsive information in response to this request, and this ruling will not address such information.

You assert the submitted information is excepted under section 552.131(a) of the Government Code. However, we note section 552.131(a) is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your arguments under section 552.131(a) and none of the submitted information may be withheld on that basis. *See* Gov't Code § 552.131; Open Records Decision Nos. 661 at 5-6 (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 (party must establish *prima facie* case that information is trade secret), 542 at 3.

We now address your argument under section 552.131(b) of the Government Code, which provides "[u]nless and until an agreement is made with [a] business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure]." Gov't Code § 552.131(b). You state the submitted information relates to negotiations between a governmental body and business prospect. However, we note section 552.131(b) does not apply after an agreement is made with a business prospect. The submitted information reflects that the corporation and business prospect have come to an agreement. Accordingly, we find you have not sufficiently demonstrated the applicability of section 552.131(b) to the submitted information. Therefore, no part of the submitted information may be withheld pursuant to section 552.131(b).

We now address MBC's arguments under section 552.102(a) of the Government Code. MBC argues that a portion of the information contains the personnel files of MBC management. Although MBC states this information should be withheld under section 552.102, this section only applies to information in the personnel files of governmental employees, as opposed to private employees. As such, section 552.102 is not applicable in this instance. However, we understand MBC to assert that a portion of the submitted information is private. Accordingly, we will consider whether any of the information at issue is excepted under section 552.101 in conjunction with common-law privacy.¹

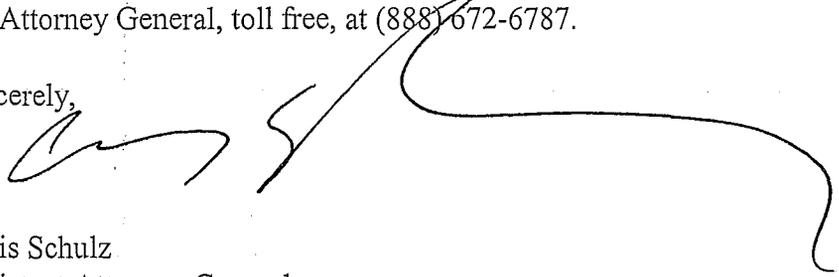
¹The Office of the Attorney General will raise a mandatory exception, such as section 552.101, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the common-law right of privacy, which protects 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found that 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 Nos. 600 (1992), 545 (1990). Upon review, we find a portion of the submitted information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the corporation must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, no portion of the remaining information is excepted from disclosure under common-law privacy. As the corporation and MBC raise no further arguments against disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 367089

Enc. Submitted documents

cc: Requestor
(w/o enclosures)