



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2010

Ms. Beth Moroney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-01288

Dear Ms. Moroney:

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# 368362 (COSA File No. 09-1354).

The City of San Antonio (the "city") received a request for information pertaining to a specified request for proposal. Although you take no position with respect to the public availability of the requested information, you state that release of this information may implicate the proprietary interests of the Boys and Girls Clubs of San Antonio (the "BGCSA"). You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the city has notified the BGCSA of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us that the city received the request for information on October 26, 2009. However, you did not request a ruling from our office until November 17, 2009. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body

demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because a third party's interests are at stake, we will address whether the submitted information must be withheld to protect the interests of the BGCSA. In addition, we note the submitted information may also be subject to section 552.101 and section 552.136 of the Government Code. Because sections 552.101 and 552.136 can provide compelling reasons to withhold information, we will also consider the applicability of these exceptions to the submitted information.

We note 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 the BGCSA explaining why their information should not be released. Therefore, the BGCSA has provided us with no basis to conclude that they have protected proprietary interests in the submitted information. *See* 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). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest that the BGCSA may have in this information.

We note that some of the submitted information may be subject to sections 552.101 and 552.136 and of the Government Code.¹ Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Federal tax returns and tax return information generally are confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a). However, section 6104 of title 26 of the United States Code provides in relevant part:

(d) Public inspection of certain annual returns[.]

(1) In general. In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under

¹The 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).

section 501(a) or an organization exempt from taxation under section 527(a)[:]

(A) a copy of

(i) the annual return filed under section 6033 . . . by such organization,

...

Shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(2) 3-year limitation on inspection of returns.- Paragraph (1) shall apply to an annual return filed under section 6033 . . . only during the 3-year period beginning on the last day prescribed for filing such a return (determined with regard to any extension of time for filing).

Id. § 6104(d)(1)-(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501 tax-exempt organization must generally make its annual information returns available for public inspection for a period of three years from the last day prescribed for filing. The public disclosure requirement of section 6104(d) for a section 501(c) or (d) organization also applies to certain other specified tax filings in addition to the annual return. *See* 26 U.S.C. § 6104(d)(1)(A).

However, the law includes an exception to this disclosure requirement for information about contributors to the organization. Section 6104(d)(3) reads as follows:

(3) Exceptions from disclosure requirement.

(A) Nondisclosure of contributors, etc. - In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization

Id. § 1604 (d). According to the information you have submitted to this office, the entity at issue in the submitted 990 Form is an organization subject to section 501(c). Furthermore, the date of filing for the submitted 990 Form was less than three years prior to the date the city received the request for information. Therefore, the submitted Form 990 is generally subject to public disclosure pursuant to section 6104 of title 26 of the United States Code. However, the names and addresses of the contributors listed in the submitted Form 990, which we have marked, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with sections 6103(a) and 6104(d)(3) of title 26 of the United States Code.

Section 552.136(b) states “[n]otwithstanding any other provision of [the Act], 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.” *Id.* § 552.136(b). The city must withhold the submitted account numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 6103 and 6104 of title 26 of the United States Code. The city must withhold the information we have marked under section 552.136 of the Government Code. 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 368362

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jim Watson
Executive Director
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(w/o enclosures)