



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2010

Mr. James G. Nolan
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711

OR2010-06250

Dear Mr. Nolan:

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# 377671 (Comptroller File No. 6186625358).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for the 2009 annual reports of two certified capital companies, Enhanced Capital Texas Fund, L.P. and Enhanced Capital Texas Fund II, L.L.C. (collectively, "Enhanced"), as well as documentation regarding the 2009 transfer of ownership of Enhanced. You claim a portion of the submitted information is excepted from disclosure under section 552.137 of the Government Code. You also state release of this information may implicate the proprietary interests of Enhanced. Accordingly, you state the comptroller notified Enhanced of this request for information and of its right to submit arguments to this office as to why the requested 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 Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We first address Enhanced's statement that it obtained some of the submitted information from private businesses and pursuant to non-disclosure and confidentiality agreements. Because Enhanced provided these records to the comptroller in connection with Enhanced's status as a certified capital company, we find this information has been collected and is maintained by the comptroller in connection with its official business, and is thus subject to the Act. *See id.* § 552.002 (information collected, assembled, or maintained in connection with transaction of official business of a governmental body is "public information" subject to Act). The provisions of the Act cannot be overruled or repealed by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Thus, notwithstanding any expectation or agreement to the contrary, these records as well as the other submitted records must be released unless they fall within the scope of an exception to disclosure.

Enhanced raises section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial 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). This exception to disclosure 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. *Id.*; *see also Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision 661 at 5-6 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

Enhanced argues release of the financial and employment information pertaining to the qualified businesses in which it invests and the information about Enhanced's organizational structure would cause substantial competitive harm to Enhanced. After reviewing the information at issue and Enhanced's arguments, we determine Enhanced has not provided any specific factual evidence substantiating its claims that the release of the information that it seeks to withhold under section 552.110(b) would result in substantial competitive harm to the company. Accordingly, we determine none of the information at issue is excepted from disclosure under section 552.110(b) of the Government Code. *See* Open Records Decision Nos. 661, 319 at 3 (1982) (information relating to organization, personnel, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Therefore, the comptroller may not withhold any of the information at issue under section 552.110(b) of the Government Code.

Next, Enhanced argues its organizational structure and tax status are confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of

common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). However, common-law privacy protects the 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); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). The submitted organizational structure and tax status information pertains to Enhanced. As a corporation, Enhanced does not have any protectable privacy interests. Thus, we conclude common-law privacy is not applicable to this information, and it may not be withheld under section 552.101 of the Government Code.

We now turn to the comptroller's claimed exception to disclosure. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address you marked and the e-mail addresses we marked are not specifically excluded by section 552.137(c). Accordingly, the comptroller must withhold the e-mail address you marked, as well as the e-mail addresses we marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.¹

In summary, the comptroller must withhold the e-mail address it marked and the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their 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.

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including private e-mail addresses under section 552.137, without the necessity of requesting an attorney general decision.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 377671

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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