



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2010

Mr. Brian Riemenschneider
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2010-11434

Dear Mr. Riemenschneider:

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# 389557 (DPS ORA # 10-1199).

The Texas Department of Public Safety (the "department") received a request for the application and all financial data provided to the department by Triple D Security, Inc. ("Triple D"), upon which basis the department issued certificate 110. You indicate that some of the requested information has been released. You claim that portions of the submitted information are excepted from disclosure under sections 552.110 and 552.130 of the Government Code. Additionally, you state that release of this information may implicate the proprietary interests of Triple D. Accordingly, you inform us, and provide documentation showing, that you notified Triple D of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 received correspondence from a representative of Triple D. We have considered the submitted arguments and reviewed the submitted information.

The department raises, and we understand Triple D to raise, section 552.110 of the Government Code. Section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we will only address Triple D's arguments under

section 552.110. Triple D claims release of its financial records and statements would cause the company substantial competitive harm. Based on this argument, we understand Triple D claims section 552.110(b) of the Government Code, which 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.* § 552.110(b); *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review of the arguments and information at issue, we find that Triple D has made only conclusory allegations that the release of its information at issue would result in substantial damage to its competitive position. Thus, Triple D has not demonstrated that substantial competitive injury would result from the release of any of its information. *See* ORD 661. Accordingly, none of the submitted information may be withheld under section 552.110(b).

We also understand Triple D to claim that its financial information is confidential pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. 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. 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 related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Common-law privacy protects the privacy interests of individuals, but 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). We note that all of the financial information at issue is related to Triple D and not any particular individual. Accordingly, none of the submitted information implicates any individual’s

privacy interest and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, the department claims that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 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. Upon review, we conclude that the department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We note the remaining information contains a personal e-mail address subject to section 552.137 of the Government Code.¹ 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 id.* § 552.137(a)-(c). The e-mail address in the remaining information is not of a type specifically excluded by section 552.137(c). As such, the e-mail address we have marked must be withheld under section 552.137, unless the owner of the address affirmatively consents to its disclosure.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The department must also withhold the e-mail address we have marked under section 552.137, unless the owner of the e-mail address affirmatively consents to its disclosure.² 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,

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

²We 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 Texas license plate numbers under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 389557

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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