



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2011

Ms. Karen H. Brophy  
Senior Assistant City Attorney  
City of Irving  
825 West Irving Boulevard  
Irving, Texas 75060

OR2011-00734

Dear Ms. Brophy:

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# 406116.

The City of Irving (the "city") received a request for all contracts between Live Nation and the Las Colinas Group. You state you have released some of the responsive information to the requestor. Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Las Colinas Group, LP ("Las Colinas"), BB Concepts, LLC ("BB Concepts"), and Live Nation Worldwide, Inc. ("Live Nation"). Accordingly, you have notified Las Colinas, BB Concepts, and Live Nation of the request and of their right to submit arguments to this office as to why their 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 comments from BB Concepts and reviewed the submitted information.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information

relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Las Colinas or Live Nation. Thus, Las Colinas and Live Nation have not demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests Las Colinas or Live Nation may have in the information. However, we will consider BB Concepts's arguments.

Initially, we address BB Concepts's assertion that portions of the submitted responsive information are not responsive to the request. BB Concepts argues, and the request reflects, the requestor only seeks contracts between Live Nation and Las Colinas. Thus, the submitted letters, which we have marked, are not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

Next, we address BB Concepts's contention that the submitted responsive information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We understand BB Concepts to argue the submitted information is not subject to the Act because it is a contract between two private parties. However, in its brief, the city states the information at issue relates to a partnership agreement regarding the city's Convention and Entertainment Center Project (the "project"). The city explains the terms of its partnership with Las Colinas required Las Colinas to enter into an agreement with a city approved concert producer such as Live Nation. The city further explains the submitted agreement, which includes Las Colinas as a signatory, is the contract between BB Concepts and Live Nation for booking services at the city's entertainment center. In addition, we note the submitted agreement is in the possession of the city, which is a governmental body as defined by section 552.003,

and was collected, assembled, or maintained in connection with the transaction of the city's official business. Therefore, we conclude the submitted agreement is subject to the Act and must be released, unless BB Concepts demonstrates that the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. Thus, we will consider BB Concepts's remaining arguments against disclosure.

Next, we address BB Concepts's assertion that the submitted responsive information is excepted from disclosure under sections 552.101, 552.110, and 552.137 of the Government Code. 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Prior decisions of this office have determined personal financial information not related to a transaction between an individual and a governmental body generally meets the first prong of the common-law privacy test. *See generally* Open Records Decision No. 600 (1992). However, whether financial information is subject to a legitimate public interest and, therefore, not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *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 United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *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). Upon review, we find that no portion of the submitted information constitutes highly intimate or embarrassing information. Furthermore, because the information pertains to contract for services related to the city's project, we find it is of legitimate concern to the public. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

BB Concepts also asserts portions of the submitted information are excepted from disclosure under constitutional privacy, which is also encompassed by section 552.101 of the Government Code. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters

related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find no portion of the information at issue falls within the zones of privacy or otherwise implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the city may not withhold any of the submitted information under section 552.101 in conjunction with constitutional privacy.

Section 552.110(b) of the Government Code 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).

In order to withhold the submitted information under section 552.110(b), BB Concepts must show how the release of the information would cause substantial competitive harm based on specific factual evidence. In this instance, BB Concepts has only made conclusory assertions of competitive harm. Therefore, we find BB Concepts has failed to demonstrate based on specific factual evidence how the release of the submitted information would cause substantial competitive harm to its interests. Furthermore, we note this office considers the prices charged in government contract awards to be a matter of strong public interest. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); ORD 541. Accordingly, the city may not withhold any of the submitted information under section 552.110(b).

BB Concepts also asserts that portions of the submitted responsive information are excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Subsection 552.137(c)(1) states that subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body by a person who has

a contractual relationship with the governmental body or by the contractor's agent" and subsection 552.137(c)(2) states that subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent[.]" *Id.* § 552.137(c)(1), (2). Upon review, we find the e-mail addresses at issue, which belong to representatives of BB Concepts and Live Nation, are among the types specifically excluded by section 552.137(c) of the Government Code. Therefore, the city may not withhold any of the e-mail addresses at issue under section 552.137 of the Government Code. As no further exceptions to disclosure have been raised, the submitted 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](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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 406116

Enc. Submitted documents

c: Mr. William Beuck, II  
President  
Las Colinas Group, L.P.  
222 West Las Colinas Boulevard, Suite 1715-N  
Irving, Texas 75039  
(Third party w/o enclosures)

Mr. Robert Johnson  
Gardere Wynne Sewell, L.L.P.  
For BB Concepts, L.L.C.  
600 Congress Avenue, Suite 3000  
Austin, Texas 78701  
(Third party w/o enclosures)

Ms. Jennifer Rawlings  
Legal Department - NA Music  
Live Nation  
9348 Civic Center Drive  
Beverly Hills, California 90210  
(Third party w/o enclosures)