



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2011

Mr. Justin Gordon  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2011-15846

Dear Mr. Gordon:

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# 435335 (OOG# 373-11).

The Office of the Governor (the "OOG") received a request for information relating to a disbursement to G-Con, LLC ("G-Con") from the Texas Enterprise Fund (the "TEF"). You state the OOG has redacted e-mail addresses from responsive information under section 552.137 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009).<sup>1</sup> You also state some of the requested information either has been or will be released. You inform us some of the submitted information is the subject of a previous open records letter ruling. Although you take no other position on the public availability of the submitted information, you believe the information at issue may implicate the interests of G-Con. You state G-Con was notified of this request for information and of its right to submit arguments to this office as to why

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<sup>1</sup>Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code. We note e-mail addresses that fall within the scope of section 552.137(c) may not be withheld pursuant to Open Records Decision No. 684. *See* ORD 684 at 10.

the submitted information should not be released.<sup>2</sup> We received arguments under sections 552.101, 552.110, 552.131, and 552.137 of the Government Code from an attorney for G-Con. We have considered G-Con's arguments and reviewed the submitted information.

You inform us the submitted economic development agreement between G-Con and the State of Texas (the "agreement") was the subject of a previous request for a ruling by the OOG, in response to which this office issued Open Records Letter No. 2011-14353 (2011). In the previous ruling, we concluded the agreement must be released. You do not indicate there has been any change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude the OOG must release the agreement to the present requestor in accordance with Open Records Letter No. 2011-14353. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). As the previous ruling is dispositive, this decision will not address G-Con's arguments regarding the agreement.

You also explain that although the remaining information relating to G-Con was the subject of Open Records Letter No. 2010-07377 (2010), G-Con was not notified of the request for information that resulted in that ruling and thus was not afforded an opportunity to submit arguments against disclosure of the requested information that related to G-Con. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 at 2-3. In this instance, G-Con was notified of the request and has submitted arguments. Thus, as there has been a change in the circumstances on which it was based, the prior ruling does not constitute a previous determination with regard to the remaining information at issue. *See* ORD 673 at 6-7 (prior ruling constitutes previous determination if, among other things, the law, facts, and circumstances on which the ruling was based have not changed). Accordingly, we will address G-Con's exceptions to disclosure of the remaining information.

Initially, we address G-Con's expectations of confidentiality with respect to the remaining information, which consists of the company's TEF application. We note information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Therefore, the information in G-Con's TEF application must be released unless it falls within

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<sup>2</sup>*See* Gov't Code § 552.305; Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

the scope of an exception to disclosure, notwithstanding any expectation or agreement to the contrary.

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 exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found.*, 540 S.W.2d 668 at 685. To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have concluded common-law privacy encompasses certain types of personal financial information. Financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

G-Con claims portions of the company’s TEF application, including business contact information relating to the president of the company and information regarding the identities of owners of G-Con and their percentages of ownership, are protected by common-law privacy. We note common-law privacy protects the interests of individuals, not those of business entities such as G-Con. *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) (corporation has no right to privacy) (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)). We also note even the home addresses and telephone numbers of private individuals are generally not protected by common-law privacy under section 552.101. *See* Open Records Decision Nos. 554 at 3 (1990) (public disclosure of an individual’s home address and telephone number is not an

invasion of privacy), 455 at 7 (home addresses and telephone numbers do not qualify as “intimate aspects of human affairs”). We also note an individual’s name is generally not private information. *See* ORD 554 at 3. Therefore, having considered G-Con’s arguments and reviewed the information the company contends is private, we find the ownership percentages we have marked are highly intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude the OOG must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. We conclude the remaining information is not highly intimate or embarrassing and a matter of no legitimate public interest and may not be withheld on privacy grounds under section 552.101.

Section 552.110 of the Government Code protects the proprietary interests of private parties with respect to two types of information: “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “commercial 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(a)-(b). G-Con claims section 552.110(b) for its entire TEF application and specified portions of the application. We note section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999). Having considered G-Con’s arguments and reviewed the information the company contends should be withheld, we find G-Con has not provided the specific factual or evidentiary showing required by section 552.110(b) that release of the information at issue would cause G-Con substantial competitive harm. We therefore conclude the OOG may not withhold any of the submitted information under section 552.110(b) of the Government Code.

Section 552.131 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

...

(2) commercial 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 § 552.131(a)(2). Thus, in excepting from disclosure only “commercial 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,” section 552.131(a)(2) provides the same protection as section 552.110(b). *See id.* § 552.110(b); ORD 661. Therefore, as we have already determined section 552.110(b) of the Government Code is not applicable to any of the information at issue, the OOG may not withhold any of the submitted information under section 552.131(a)(2) of the Government Code.

Section 552.137 of the Government Code states “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 public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). In this instance, G-Con claims section 552.137 for an e-mail address that falls within the scope of section 552.137(c). *See id.* § 552.137(c)(3)(Gov't Code § 552.137(a) not applicable to an e-mail address provided to a governmental body in the course of negotiating the terms of a contract or potential contract). We therefore conclude the OOG may not withhold the e-mail address at issue under section 552.137 of the Government Code.

We note some of the submitted information falls within the scope of section 552.136 of the Government Code.<sup>3</sup> Section 552.136(b) provides that “[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); *see id.* § 552.136(a) (defining “access device”). The OOG must withhold the bank account and bank routing numbers we have marked under section 552.136 of the Government Code.

In summary, the OOG must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the bank account and bank routing numbers we have marked under section 552.136 of the Government Code. The rest of 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.

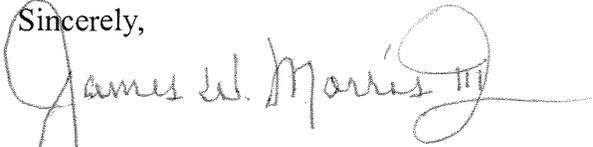
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>3</sup>This office will raise section 552.136 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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,

A handwritten signature in cursive script that reads "James W. Morris, III". The signature is written in black ink and is positioned above the typed name.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/em

Ref: ID# 435335

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Mark Early  
Vinson & Elkins  
2001 Ross Avenue Suite 3700  
Dallas, Texas 75201-2975  
(w/o enclosures)