



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2012

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2012-18034

Dear Mr. Koury:

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# 470836.

The City of Bryan (the "city") received a request for information pertaining to the city's request for qualifications regarding the collection of municipal court fees and fines, including all submitted proposals, any written evaluations of the proposals, the recommendation to award the collection contract, and all agendas concerning the bidding, evaluating, and awarding of the contract. You state five third parties do not object to the release of their proposals and the city will release these proposals to the requestor.¹ You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified Gila, LLC d/b/a Municipal Services Bureau ("MSB") of the request and of the company's right to submit arguments to this office as to why the submitted information should not be released to the requestor. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (1990)* (statutory predecessor to section 552.305 permits governmental body to rely on

¹The five third parties whose information will be released are the following: American Municipal Services; Credit Adjustments, Inc.; Linebarger, Goggan, Blair & Sampson, LLP; McCreary Veselka Bragg & Allen; and Perdue, Brandon, Fielder, Collins & Mott, LLP.

interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note that, while you state the city will release the proposals of five third parties and have submitted the proposal of a sixth company, you did not submit, nor do you argue to withhold, the remaining requested information. We assume that, to the extent any additional responsive information existed when the city received the request for information, the city has released it to the requestor. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Next, we must address the city's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body 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(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

You state the city received the request for information on August 10, 2012. Thus, the city was required to request a decision from this office by August 24, 2012 and to submit the information required by section 552.301(e) by August 31, 2012. Consequently, because the city submitted its request for a decision and the information at issue on September 7, 2012, we find the city failed to comply with the requirements of section 552.301. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling

reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Here, a compelling reason exists because a third party's interest is implicated. We also note portions of the submitted information may be subject to section 552.101 of the Government Code, which can provide a compelling reason to withhold information; thus, we will also address this exception.²

We note 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 ruling, we have not received comments from MSB. Thus, we have no basis to conclude MSB has 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 any of the information at issue on the basis of any proprietary interest MSB may have in the information.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

The type of information considered intimate and 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. 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. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find some of the submitted information consists of personal financial information. We are unable to determine whether this information pertains to actual living

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

individuals or fictitious individuals created as samples for purposes of responding to the request for qualifications by MSB. Therefore, to the extent the information we have marked pertains to actual living individuals, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the marked information does not pertain to actual living individuals, it is not private, and the city may not withhold it under section 552.101 on that basis.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the information we have marked pertains to actual living individuals, the city must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released, but any information subject to copyright may only be released in accordance with copyright law.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/CN/sdk

Ref: ID# 470836

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**

**Mr. Bruce Cummings
Chief Financial Officer
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(w/o enclosures)**