



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2012

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

OR2012-19219

Dear Mr. Sterner:

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# 472671 (OOG ID No. 223-12).

The Office of the Governor (the "governor's office") received a request for the application submitted by G-Con LLC ("G-Con") to the Texas Enterprise Fund (the "TEF"), G-Con's contract to receive funding from the TEF and any amendments or changes to that contract, certain correspondence related to G-Con's application or its TEF award, and records that pertain to "clawbacks," the monitoring or oversight of G-Con's TEF award, or the release of funds to G-Con. You state you will release most of the responsive information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the remaining information 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 the submitted 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 the circumstances). We have received comments submitted by an attorney for G-Con. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-15846

(2011) and 2011-14353 (2011). In Open Records Letter No. 2011-15846, we determined the governor's office must withhold the information we marked in G-Con's TEF application under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.136 of the Government Code, and release the remaining information. In Open Records Letter No. 2011-14353, we determined the governor's office must release G-Con's economic development agreement. We conclude, as we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the governor's office must continue to rely on those rulings as previous determinations and withhold or release the information at issue in accordance with Open Records Letter Nos. 2011-15846 and 2011-14353.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 information protected by other statutes. The governor's office asserts some of the submitted information is confidential under section 301.081 of the Labor Code. Section 301.081 governs the release of employment information held by the Texas Workforce Commission (the "commission") and provides in pertinent part as follows:

(a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

(c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

Labor Code § 301.081(a)-(c). The governor's office asserts the information it has marked consists of employment information provided to the governor's office by the commission

¹As our determination is dispositive, we do not address G-Con's arguments against disclosure of its economic development agreement or TEF application.

pursuant to the interagency transfer doctrine, as well as information derived from the records received from the commission. Section 301.081(c) states employment information maintained by the commission may be released to a public employee in the performance of public duties. *Id.* § 301.081(c). Pursuant to the interagency transfer doctrine, records that are confidential in the hands of the originating governmental body remain confidential when transferred to another governmental body. *See* Open Records Decision Nos. 674 at 4 (2001), 667 at 4 (2000); *see also* Attorney General Opinion H-836 (1976) (governmental bodies have need to maintain unrestricted flow of information, to effectuate state policy that governmental bodies cooperate in the efficient and economical administration of statutory duties). Accordingly, we find the information you have marked is confidential under section 301.081 of the Labor Code and must be withheld in conjunction with section 552.101 of the Government Code. *See* Open Records Decision No. 599 at 4 (1992) (concluding predecessor statute to section 301.081 made confidential total number of employees of employing unit provided to commission in quarterly unemployment tax reports).

G-Con claims section 552.110(b) of the Government Code for some of its remaining information. Section 552.110(b) protects “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(b). 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 governor’s office may not withhold any of the remaining 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 governor's office may not withhold any of the remaining information under section 552.131(a)(2) of the Government Code.

In summary, the governor's office must continue to rely on Open Records Letter Nos.2011-15846 and 2011-14353 as previous determinations and withhold or release the information at issue in accordance with those rulings. The governor's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code. The governor's office must release the remaining information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 472671

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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