



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2013

Ms. H. Karen Fastenau
General Counsel
Texas Veterans Commission
P.O. Box 12277
Austin, Texas 78711-2277

OR2013-09380

Dear Ms. Fastenau:

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# 489820.

The Texas Veterans Commission (the "commission") received a request for the records concerning a specified school. Although you take no position as to whether the submitted information is excepted under the Act, you inform us the release of this information may implicate the proprietary interests of Worldwide Canine, Inc. ("Worldwide Canine"). Accordingly, you notified Worldwide Canine of the 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); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from Worldwide Canine. We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the commission's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See id.* § 552.301. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state

the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). You state the commission received the request for information on March 22, 2013. Accordingly, the commission's ten-business-day deadline was April 5, 2013. However, we received the commission's request for a ruling by interagency mail on April 8, 2013. Furthermore, the commission has provided no evidence this communication was deposited into interagency mail within the applicable deadline. *See id.* § 552.308(b) (state agency meets deadline if request, notice, or other writing is sent by interagency mail and agency provides evidence sufficient to establish request, notice, or other writing was deposited in interagency mail within deadline period). Accordingly, we conclude the commission failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information 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); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third-party interests are at stake, we will consider whether the submitted information must be withheld to protect the interests of Worldwide Canine.

We understand Worldwide Canine to raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information. Section 552.101 excepts from public 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. 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. This office has also determined personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992). However, 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 Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the submitted information must be withheld in its entirety to protect the individual's privacy.

Worldwide Canine raises common-law privacy for the entirety of the submitted information. In this instance, however, Worldwide Canine has not demonstrated, nor does it otherwise appear, this is a situation in which this information must be withheld in its entirety on the basis of common-law privacy. However, upon review, we agree that a portion of the submitted information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the commission must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.¹ Worldwide Canine has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the commission may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Worldwide Canine raises section 552.110(b) of the Government Code for the remaining information. This section excepts from disclosure “[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). 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 requested information. *See 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, we find Worldwide Canine has made only conclusory allegations the release of the information at issue would cause the company substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See Gov’t Code § 552.110(b); Open Records Decision Nos. 661 at 5–6, 319 at 3 (1982)* (information relating to organization and personnel, market studies, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to

¹As our ruling for this information is dispositive, we need not address Worldwide Canine’s remaining argument against its disclosure.

section 552.110). Thus, the commission may not withhold any of the remaining information under section 552.110(b).

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions to disclosure are raised for the remaining information, the commission must release it.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 489820

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Robin Hawkins
Manager
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Spring Branch, Texas 78070
(w/o enclosures)