



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2014

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

OR2014-11613

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# 529700 (OOG #123-14).

The Office of the Governor (the "governor's office") received a request for (1) any assessments, evaluations, worksheets, score sheets, emails, notes, transcripts, and recommendations pertaining to a specified RFP and (2) copies of all proposals submitted in response to the specified RFP except for the proposal from MGT of America, Inc. You state the governor's office will release some information to the requestor. Although you take no position as to whether the remaining requested information is excepted under the Act, you state release of the remaining requested information may implicate the proprietary interests of MAXIMUS Consulting Services, Inc. ("MAXIMUS"). Accordingly, you state you notified MAXIMUS 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 the Act in certain circumstances). We have received comments from MAXIMUS. We have considered the submitted arguments and reviewed the submitted 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 is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual’s name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. See Open Records Decision Nos. 554 (1990), 448 (1986). Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and the governor’s office may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. 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)). After review of the submitted information, we find MAXIMUS has failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the governor’s office may not withhold any of the submitted information under section 552.101 on the basis of constitutional privacy. As no further exceptions against disclosure are raised, the governor’s office must release the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a stylized flourish at the end.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 529700

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Adam Polatnick
Vice President, Contracts
MAXIMUS Consulting Services, Inc.
4000 South Interstate 35
Austin, Texas 78704
(w/o enclosures)