



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1997

Mr. John Steiner
Division Chief
Law Department
City of Austin
P O Box 1088
Austin, TX 78767-2268

OR97-0666

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104948.

The City of Austin (the "city") received a request for a proposal submitted by TMG Consulting, Inc. You state that portions of the requested information have been released to the requestor. However, you seek a determination whether the remaining information is excepted from disclosure by sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Since the property and privacy rights of a third party may be implicated by the release of some of the requested information, this office notified TMG Consulting, Inc. of this request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). TMG Consulting, Inc. did not respond to our notice. In your letter to this office, however, you claim that the requested information is protected by sections 552.101 and 552.110 of the Government Code.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In this instance neither the city nor TMG Consulting, Inc. has demonstrated that the requested information constitutes information protected by section 552.110. Open

Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 (1990) at 5 (party must establish a prima facie case that information is trade secret). Therefore, the city may not withhold the information under section 552.110.

You also assert that the information may be protected by section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have presented no statutory or other legal authority which deems this information confidential by law. This section also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. After reviewing the submitted material, we do not believe that any of the information is protected by common-law privacy. Accordingly, the requested information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/gle

Ref.: ID# 104948

Enclosures: Submitted documents

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