



June 21, 2002

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2002-3370

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164722.

The City of College Station (the "city") received a request for information pertaining to Mesa Marble and Stone Company ("Marble Craft")'s jobs, gross payroll, income statements, cash flow statements, balance sheets, and the Freewing property appraisal by Hamilton. You state that the requested appraisal has been released to the requestor. You assert that you notified Marble Craft of the request for information and of its right to submit reasons to this office as to why this information should be withheld from disclosure pursuant to section 552.305 of the Government Code. *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) (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 Public Information Act in certain circumstances). In turn, Marble Craft has submitted a letter to this office arguing that a portion of the requested information is excepted from disclosure under sections 552.101, 552.110 and 552.131 of the Government Code, and under section 7213 of Title 26 of the United States Code. You contend that the tax return information submitted to the city by Marble Craft is made confidential under federal law, and therefore, must be withheld from disclosure pursuant to section 552.101. We have considered the exceptions claimed and reviewed the submitted information.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” After reviewing the information at issue, we agree that the tax documents you submitted to this office constitute confidential “tax return information” and, as such, must be withheld in their entirety pursuant to section 552.101 in conjunction with federal law. *See* 26 U.S.C. § 6103.

Marble Craft contends that its financial statements submitted to the city in connection with its lease are protected from public disclosure as “commercial and financial information” under section 552.110(b). The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999); *see also National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). In this instance, Marble Craft has demonstrated how the release of its financial statements would result in substantial competitive injury. Accordingly, the city must withhold the Marble Craft “Balance Sheets,” “Income Statements,” and “Statement of Cash Flows” in their entirety from disclosure pursuant to section 552.110(b) of the Government Code. As sections 552.101 and 552.110(b) are dispositive, we do not address the other claimed exceptions.

In summary, the tax documents submitted to this office constitute confidential “tax return information” and, as such, must be withheld in their entirety pursuant to section 552.101 in conjunction with federal law. The city must withhold all Marble Craft “Balance Sheets,” “Income Statements,” and the “Statement of Cash Flows” in their entirety from disclosure pursuant to section 552.110(b) of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 164722

Enc. Submitted documents

c: Mr. Benito Flores-Meath
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(w/o enclosures)

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