OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 22, 2002

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2002-5955

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170947.

The Texas Youth Commission (the "commission") received three requests for information from proposals received in response to a particular request for proposals. Although you raise no exception to disclosure of this information on behalf of the commission, you have notified the interested third parties—CTM Parnership ("CTM"); Achim Becker ("Becher"); Weldon Henry ("Henry"); John Greg Turcotte ("Turcotte"); Remington Realty McAllen, Ltd. ("Remington"); Woe-Jan Ventures, LLC ("Woe-Jan"); Bill and Joy Burns ("Burns"); BAM Joint Venture ("BAM"); and Travis H. Burris ("Burris")—pursuant to section 552.305 of the Government Code. *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 to disclosure in certain circumstances).

An interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, CTM, Becher, Henry, Turcotte , Remington, Burns, BAM, and Burris have not submitted to this office any reasons explaining why their proposals should not be released. We thus have no basis for concluding that any information in their proposals constitutes proprietary information. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999), 552 at 5 (1990), 542 at 3 (1990).

One third party, Woe-Jan, did respond to the section 552.305 notice, sending a letter to the commission , which forwarded it to this office. We will treat this letter as a response under section 552.305. Although Woe-Jan objects to the release of certain information from its proposal, it does not argue that any of the information is proprietary in nature. *See, e.g.,* Gov't Code 552.110(b) (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); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). We note, however, that Woe-Jan's proposal includes three individuals' personal financial 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." This section encompasses common law privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* 2) of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first prong of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (privacy protects personal financial information that does not relate to financial transactions between individual and governmental body), 523 (1989) (privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (privacy protects assets and income source information). In addition, we find that the personal financial statements at issue here are not of legitimate public interest. Accordingly, these documents, which we have marked, are protected by common law privacy and therefore must be withheld pursuant to section 552.101. Because this information is being withheld only on the basis of privacy, requestor Woerner has a special right of access to his financial information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to information to person, or person's representative, to whom information relates on grounds that information is considered confidential by privacy principles).

We also note that the submitted proposals include individuals' social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the submitted proposals are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the

Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the commission pursuant to any provision of law, enacted on or after October 1, 1990. However, because the laws regarding the confidentiality of social security numbers are intended to protect individuals' privacy, each requestor has a special right of access to his own social security number. *See* Gov't Code § 552.023(b).

We next note that Becher's proposal includes a bank account number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Pursuant to this exception, the department must withhold the account number we have marked. However, this provision was enacted to protect the privacy of an individual. Therefore, if requestor Jim Wilson is the James Wilson who is listed as Becher's agent, he has a special right of access to the account number. *See* Gov't Code § 552.023.

In addition, we note that several proposals include email addresses. Section 552.137 of the Government Code provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]." Unless the owners of these e-mail addresses have affirmatively consented to their release, the department must withhold the marked e-mail addresses in accordance with section 552.137. *See* Gov't Code § 552.137(b). We have marked individuals' e-mail addresses that must be withheld pursuant to section 552.137. We are unable to discern whether other e-mail addresses belong to individuals or businesses. Section 552.137 does not apply to a business' general e-mail address or a government employee's work e-mail address. Therefore, to the extent the unmarked e-mail addresses belong to individuals, they must also be withheld from public disclosure. We note, however, that e-mail addresses are excepted from disclosure in order to protect individuals' privacy, and each requestor therefore has a special right of access to his own e-mail address. *See* Gov't Code § 552.023(b).

Finally, we note that some of the materials at issue may be protected by copyright. To the extent any information required to be released is protected by copyright, the commission must comply with the copyright law and is not required to furnish copies of the copyrighted information to the requestor. Rather, the commission must only allow the requestor to inspect the copyrighted information. Attorney General Opinion JM-672 at 2-3 (1987); *see* Gov't Code § 552.027(c). If the requestor wishes to make copies of copyrighted information, the person must do so unassisted by the commission. In making copies, the requestor assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the commission must withhold the marked financial information, bank account number, and e-mail addresses. Social security numbers must be withheld if obtained or maintained pursuant to a law enacted on or after October 1, 1990. Because all of these exceptions are based on privacy, each requestor has a special right of access to the information that pertains to him. All other information must be released, subject to copyright laws where applicable.

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).

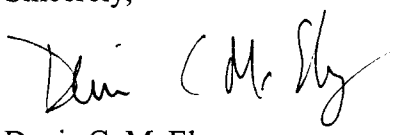
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 170947

Enc. Submitted documents

c: Mr. Morgan Spear
President
Morgan Spear Associates, Inc.
225 S. Carancahua
Corpus Christi, Texas 78401
(w/o enclosures)

Mr. Cliff Woerner
Managing Director
Woe-Jan Ventures, LLC
4807 Park Lane
Austin, Texas 78732
(w/o enclosures)

Mr. Jim Wilson
Delta Construction
2901 W. Hwy 107 # 922
McAllen, Texas 78504
(w/o enclosures)

Mr. Achim Becker
c/o James R. Wilson, Agent
RR 14, Box 172
Edinburg, Texas 78539
(w/o enclosures)

Mr. Weldon Henry
9415 Parkford Dr.
Dallas, Texas 75238
(w/o enclosures)

Mr. John Greg Turcotte
7800 IH-10 West, Suite 435
San Antonio, Texas 78230
(w/o enclosures)

Mr. Claudio A. Silvestri
Manager
Remington Realty McAllen, LTD.
2121 West Spring Creek Parkway, Suite 204
Plano, Texas 75023
(w/o enclosures)

Mr. Bill Burns and Ms. Joy Burns
1024 N. 77 Sunshine Strip
Harlingen, Texas 78550
(w/o enclosures)

BAM Joint Venture
Ben Ivey & David Escobar, Partners
8811 Alameda
El Paso, Texas 79907
(w/o enclosures)

Mr. Travis H. Burris
14642 Red River
Corpus Christi, Texas 78410
(w/o enclosures)