



November 7, 2002

Mr. Martin Hubert
Deputy Commissioner
Texas Department of Agriculture
P. O. Box 12847
Austin, Texas 78711

OR2002-6352

Dear Mr. Hubert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171919.

The Texas Department of Agriculture (the "department") received a request for copies of information related to the Go Texan Partnership Program, its board, Charles Butt, any HEB company, Olive Design, Sicola/Martin, Ed Small, and/or BAE Systems Integrated Defense Solutions, Inc. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, 552.136 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information, which includes representative sample documents.²

Initially, we presume that the department has already provided the requestor with all other responsive information, other than the submitted information, to the extent that it exists. If not, the department must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also*

¹ Although the department did not claim that any portion of the requested information was excepted from disclosure pursuant to sections 552.136 and 552.137 of the Government Code within ten business days of the department's receipt of the written request, we will address the department's claim under these sections since such claims constitute compelling interests sufficient to overcome the existing presumption that these portions of the requested information are now public. *See* Gov't Code §§ 552.301(b), .302; *see also* Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.107 of the Government Code.³ Section 552.107(1) protects information encompassed by the attorney-client privilege. We note that in instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *See* Open Records Decision No. 574 at 5 (1990).

Based on our review of your representations and the information at issue, we find that portions of Exhibits B-1 and B-3, as well as the entirety of Exhibits B-2 and B-4, which we have marked, constitute either a client confidence or an attorney's legal advice or opinion provided in furtherance of the rendition of legal services to the client. Accordingly, we conclude that the department may withhold the portions of Exhibits B-1 and B-3, as well as the entirety of Exhibits B-2 and B-4, which we have marked, pursuant to section 552.107(1). However, we note that the department has failed to demonstrate that portions of Exhibits B-1 and B-3, as well as the entirety of Exhibit B-5, which we have marked, constitute either a client confidence or an attorney's legal advice or opinion provided in furtherance of the rendition of legal services to the client. Accordingly, we also conclude that the department may not withhold this information under section 552.107(1) of the Government Code.

³ We note that in Open Records Decision No. 574 (1990), this office determined that the statutory predecessor to section 552.107(1) was the appropriate exception to disclosure for a governmental body to cite when seeking to protect communications made between the governmental body and its legal counsel. Accordingly, we do not address your section 552.101 and 552.103 claims with regard to whether any portion of the submitted information is protected from disclosure under the attorney-client privilege.

You also claim that social security numbers that are contained within Exhibit C are excepted from disclosure pursuant to section 552.101 of the Government Code. We note that a social security number may be withheld in some circumstances 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).⁴ *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and 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.* You indicate that chapter 231 of the Family Code constitutes such law. Specifically, we note that section 231.006 of the Family Code, which was enacted after October 1, 1990, provides in pertinent part that “[a] bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.” Fam. Code § 231.006(c). You state that Exhibit C contains documents which are required to be submitted to the department by applicants and grantees in accordance with section 231.005 of the Family Code. We note that section 231.006 required the applicants in this case to submit their social security numbers to the department as part of this application process. Therefore, we find that the department is maintaining these social security numbers pursuant to a provision of law enacted after October 1, 1990. Accordingly, we conclude that the social security numbers in Exhibit C are confidential under section 405(c)(2)(C)(viii)(I) and, thus, must be withheld pursuant to section 552.101 of the Government Code.

We note that portions of Exhibit E are subject to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov’t Code § 552.130. Accordingly, we conclude that the department must withhold the Texas driver’s license numbers that we have marked in Exhibit E pursuant to section 552.130 of the Government Code.

⁴ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov’t Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

You also claim that portions of Exhibits D and E are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. Accordingly, we conclude that the department must withhold the information that we have marked in Exhibits D and E pursuant to section 552.136 of the Government Code.

Finally, you claim that portions of Exhibit F contain e-mail addresses that are excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential and provides in pertinent part:

(a) An 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 this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You state that none of the individuals to whom the marked e-mail addresses in Exhibit F belong have affirmatively consented to the release of their respective e-mail addresses. Accordingly, we conclude that the department must withhold these e-mail addresses pursuant to section 552.137. We note that portions of Exhibit B-1 which are not excepted from disclosure under section 552.107 contain e-mail addresses of members of the public. If the individuals to whom these e-mail addresses belong have not affirmatively consented to the release of their respective addresses, then the department must also withhold these e-mail addresses pursuant to section 552.137 of the Government Code.⁵

In summary, the department must release all responsive information that was not submitted to us for review to the extent that it exists and has not already been released to the requestor. The department may withhold the portions of Exhibits B-1 and B-3, as well as the entirety of Exhibits B-2 and B-4, which we have marked, pursuant to section 552.107(1) of the Government Code. The department must withhold the social security numbers contained in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with federal law. The department must withhold the Texas driver's license numbers that we have marked in Exhibit E pursuant to section 552.130 of the Government Code. The department must withhold the information that we have marked in Exhibits D and E pursuant to section 552.136 of the Government Code. The department must withhold the marked e-mail addresses in Exhibit F pursuant to section 552.137 of the Government Code. The department must also withhold the marked e-mail addresses in Exhibit B-1 pursuant to section 552.137, if the individuals to whom these addresses belong have not affirmatively consented to the release of their respective addresses. The department must release the remaining submitted information to the requestor.

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

⁵ Because we base our ruling on the above-noted exceptions to disclosure, we need not address your remaining claims.

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).

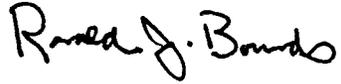
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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.

Mr. Martin Hubert - Page 7

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large initial "R".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 171919

Enc. Marked documents

cc: Mr. Leland Beatty
P. O. Box 50211
Austin, Texas 78763
(w/o enclosures)