



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2003

Mr. Jack Steele
Executive Director
Gulf Coast Small Business Finance Corporation
P.O. Box 22777
Houston, Texas 77227-2777

OR2003-9323

Dear Mr. Steele:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193462.

The Houston-Galveston Area Local Development Corporation, also known as the Gulf Coast Small Business Finance Corporation (the "corporation"), received three requests from the same requestor for information relating to CJ Entertainment ("CJ"), Genesis Investors Group ("Genesis"), Eerie Entertainment ("Eerie"), and related matters.¹ You believe that some of the requested information may be excepted from disclosure under section 552.101 of the Government Code. You also believe that this request for information implicates the proprietary interests of Genesis. You notified Genesis of this request for information and of its right to submit arguments to this office as to why information relating to Genesis should not be released.² You also have submitted the information that you believe may be excepted

¹The first request is for (1) e-mails relating to a previous request for information, the attorney general's determination, and CJ, Genesis, and Eerie; (2) the listing prepared by the corporation of records determined to be unavailable to the requestor under the Public Information Act (the "Act"), chapter 552 of the Government Code; and (3) memos concerning Eerie. The second request is for "everything to do with" CJ, Genesis, and Eerie. The third request is for a supplemental funding package submitted to the Small Business Administration; communications and documentation of a judgment; and everything related to CJ, Genesis, Eerie, and a named individual.

²See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (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 under certain circumstances).

from disclosure. We have considered your arguments and have reviewed the submitted information. We assume that the corporation has released any other information that is responsive to these requests, to the extent that such information existed when the corporation received these requests. If not, then the corporation must release any such information at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the corporation to release information that did not exist when it received these requests or to create responsive information.³

We next note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Genesis. Thus, Genesis has not demonstrated that any of the submitted information is proprietary for purposes of section 552.110 of the Government Code. *See, e.g.,* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

You believe that the corporation may be required to withhold some of the submitted information under section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.,* Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

³*See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

In this instance, most of the submitted information relates to corporate and other business entities. These business entities have no common-law right to privacy. *See United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy); Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests). We conclude that the remaining information, which we have marked, is protected by common-law privacy and must be withheld from disclosure under section 552.101 of the Government Code.⁴

The corporation also must withhold some of the submitted information under section 552.136 of the Government Code. Section 552.136 provides as follows:

(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. We have marked the information that the corporation must withhold under section 552.136 of the Government Code.

⁴We note that the submitted documents also contain a small amount of additional information that would ordinarily be excepted from disclosure under section 552.101 in conjunction with common-law privacy. In this instance, however, that information pertains to the requestor and therefore may not be withheld from him on privacy grounds. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Should the corporation receive another request for this information from a person who would not have a special right of access to it, the corporation should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301, .302.

In summary: (1) the corporation must withhold the information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy; and (2) the corporation also must withhold the information that is confidential under section 552.136. The rest of the submitted information must be released.

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).

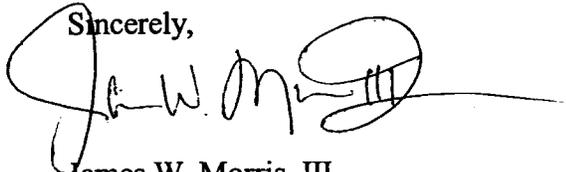
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 193462

Enc: Submitted documents

c: Mr. David Crowe
5311 Kirby Drive, #207
Houston, Texas 77005
(w/o enclosures)

Mr. Jim Fetterly
Genesis Investors, LLC
3 Seeder's Walk
The Woodlands, Texas 77381
(w/o enclosures)