



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2006

Ms. Amanda McDowell
Deputy City Secretary
City of Burleson
141 West Renfro
Burleson, Texas 76028-4261

Ms. Cary Leahy White
Taylor Olson Adkins Sralla Elam L.L.P.
I-30 at Bryant-Irvin Road, Suite 200
Fort Worth, Texas 76107-4654

OR2006-08582

Dear Ms. McDowell and Ms. White:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 255698.

The City of Burleson (the "city"), which Ms. White represents, received two requests from the same requestor for information relating to Rovin, Inc. ("Rovin"). The first request is for "the status of [a] 380 Sales Tax Agreement" between the city and Rovin, including information regarding the "current financial condition of the agreement, monies paid/received on the grant and the city sales tax[.]" The second request is for a copy of a lease between Rovin and Paradigms for Success ("Paradigms"). The city seeks to withhold information that is responsive to the first request under section 552.101 of the Government Code. Although the city claims no exception to the disclosure of the requested lease, the city believes that the lease implicates the interests of Rovin and Paradigms. The city notified Rovin and Paradigms of the second request for the information and of their right to submit

arguments to this office as to why the information should not be released.¹ We also received correspondence from an attorney for Rovin. We have considered all of the submitted arguments and have reviewed the submitted information. We also have considered the comments that we received from the requestor.² We assume that the city has released any other information that is responsive to the first request, to the extent that such information existed when the city received that request.³ If not, then any such information must be released immediately. See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential. The city raises section 552.101 in conjunction with section 321.3022 of the Tax Code. Section 321.3022 provides in part:

(a) The comptroller on request shall provide to a municipality that has adopted a tax under this chapter and that has a population of not more than 275,000 information relating to the amount of tax paid to the municipality under this chapter during the preceding or current calendar year by each person doing business in the municipality who annually remits to the comptroller state and local sales tax payments of more than \$25,000.

(b) The comptroller on request shall provide to a municipality that has adopted a tax under this chapter information relating to the amount of tax paid to the municipality under this chapter during the preceding or current calendar year by each person doing business in an area, as defined by the municipality, that is part of:

- (1) an interlocal agreement;
- (2) a tax abatement agreement;
- (3) a reinvestment zone;
- (4) a tax increment financing district;

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

³We note that the Act does not require the city to release information that did not exist when it received the first request or create responsive information. See *Econ. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

- (5) a revenue sharing agreement;
- (6) an enterprise zone;
- (7) a neighborhood empowerment zone;
- (8) any other agreement, zone, or district similar to those listed in Subdivisions (1)-(7); or
- (9) any area defined by the municipality for the purpose of economic forecasting.

....

- (f) Information received by a municipality under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality under this chapter, or for the purpose described in Subsection (g).

Tax Code § 321.3022(a), (b), (f). You do not inform us, and it does not otherwise appear to this office, that any of the information that the city seeks to withhold under section 321.3022 was received by the city from the comptroller, as specified by the statute. *See id.* Likewise, you have not explained how or why any of the information in question falls within the scope of subsections (a) or (b) of section 321.3022. *See id.* § 321.3022(a)-(b). Thus, you have not demonstrated that any of the information in question is made confidential by this statute. *See Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).* We therefore conclude that the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 321.3022 of the Tax Code.

We note, however, that the information in question contains personal e-mail addresses. Section 552.137 of the Government Code provides in part:

- (a) Except as otherwise provided by this section, 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(a)-(b).⁴ Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses that the city must withhold under section 552.137, unless the owner of the e-mail address has affirmatively consented to its public disclosure.

Next, we address the public availability of the submitted lease. We 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 Paradigms. Thus, there has been no demonstration by Paradigms that any information contained in the lease is confidential or proprietary for the purposes of the Act. *See* Gov't Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Rovin argues that the lease is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Government Code provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987).

⁴Unlike other exceptions to disclosure, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Rovin asserts that the lease “is not properly a ‘record’ of the city.” Rovin inform us that it provided the lease to the city in the course of negotiating an agreement with the city. Rovin also states that it was the intention of both Rovin and the city that the lease was to have been returned to Rovin. Rovin informs us that the city has no legitimate interest in retaining a copy of the lease and that Rovin has demanded that it be returned. The city informs us, however, that it was still in possession of a copy of the lease when it received the second request for information. Therefore, having considered Rovin’s arguments and the city’s representations, we find that the lease constitutes information that the city collected, assembled, or maintains in connection with the transaction of official city business. See Gov’t Code § 552.002(a)(1). We therefore conclude that the lease constitutes public information under section 552.002(a) and must be released, unless it falls within an exception to public disclosure.

Section 552.101 of the Government Code also 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 *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. This office has determined that financial information that relates 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 Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of state employees’ personnel records), 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).

We note that the parties to the lease include Rovin and Paradigms, both of which are corporate entities, and two individuals who executed the lease as guarantors of the lessee’s contractual obligations. Common-law privacy protects the interests of individuals, not those of corporate and other business entities. See 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); see also *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). Thus, Rovin and Paradigms have no privacy interests in the lease. However, the lease does

implicate the privacy interests of the personal guarantors. We therefore conclude that the city must withhold the lease in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.⁵

In summary: (1) the city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure; and (2) the city must withhold the lease under section 552.101 of the Government Code in conjunction with common-law privacy. 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

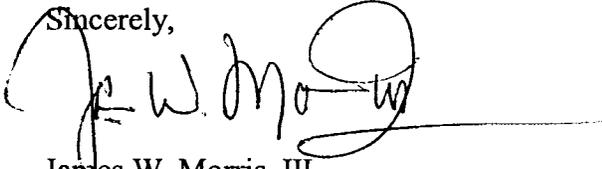
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

⁵As we are able to make this determination, we do not address Rovin's other arguments against disclosure.

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 Office of the Attorney General 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. 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', with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 255698

Enc: Submitted documents

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