



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2009

Mr. George E. Hyde  
Denton, Navarro, Rocha & Bernal P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-06132

Dear Mr. Hyde:

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# 342256.

The City of Windcrest (the "city") received a request for information pertaining to a specified TexPool account and two specified invoices. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.110, and 552.131 of the Government Code. In addition, you indicate that the release of some of the requested information may implicate the proprietary interests of Doucet & Associates, Inc. ("Doucet"), DDPZ Planning and Development, LLC ("DDPZ"), and Rackspace, Inc. ("Rackspace"). Accordingly, we understand that you have notified the third parties of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the responsive information submitted by the city does not include information responsive to the portion of the request seeking information pertaining to a specified TexPool account. As you have not submitted this information for our review, we assume you have released it to the extent that it existed on the date the city received this request. If you have not released this additional information, then you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

Next we note that an interested third party is allowed ten 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Doucet, DDPZ, nor Rackspace have submitted to this office any reasons explaining why the submitted information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of these companies, and the city may not withhold any portion of the submitted information on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3.

We next note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

(a) the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information constitutes invoices pertaining to the expenditure of funds by the city that are subject to subsection 552.022(a)(3). The city must release this information unless it is expressly confidential under other law. Although you raise sections 552.103 and 552.131(b) of the Government Code, these sections are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, sections 552.103 and 552.131(b) are not "other law" that make information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted information under these sections. However, because information that is subject to section 552.022(a)(3) may be withheld under mandatory exceptions, we will consider whether the submitted information is confidential under sections 552.101, 552.110, or 552.131(a) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by 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) not of legitimate

concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 545 (1990). You indicate that a portion of the submitted information consists of financial information. However, we note that common-law privacy protects the interests of individuals, not those of governmental or 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). In this instance, we note and you acknowledge that the information at issue pertains only to “financial matters between an economic development company and a governmental entity.” Thus, based on your representations and our review of the information at issue, we conclude that common-law privacy is not applicable to any of the information at issue and it may not be withheld on this basis.

You also raise section 552.110 of the Government Code. We note, however, that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Therefore, because the third parties at issue, Doucet, DDPZ, and Rackspace, have not objected to release of the information at issue, the city may not withhold any of the remaining information under section 552.110 of the Government Code.

Finally, you assert that the information at issue is excepted from disclosure under section 552.131(a)(2). Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Gov't Code § 552.131. Section 552.131(a) is co-extensive with section 552.110 of the Government Code. See *id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). We note that section 552.131(a) does not protect the interests of a governmental body regarding the release of information pertaining to economic

development negotiations. You assert that the information at issue pertains to ongoing negotiations between the city and a business entity. However, we have not received arguments from any third party explaining that the submitted information contains trade secrets or commercial or financial information for the purposes of sections 552.110(a) or 552.110(b). Therefore, we find that the city may not withhold the submitted information under section 552.131(a)(2). As you raise no additional arguments against disclosure, the submitted information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 342256

Enc: Submitted documents

cc: Requestor  
(w/o enclosures)

cc: Requestor  
(w/o enclosures)

cc: Ddpz Planning and Development, Llc  
C/o Mr. George E. Hyde  
Denton, Navarro, Rocha & Bernal P.c.  
2517 North Main Avenue  
San Antonio, Texas 78212  
(w/o enclosures)

Doucet & Associates, Inc.  
c/o Mr. George E. Hyde  
Denton, Navarro, Rocha & Bernal P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212  
(w/o enclosures)

Rackspace  
c/o Mr. George E. Hyde  
Denton, Navarro, Rocha & Bernal P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212  
(w/o enclosures)