



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2009

Ms. Griselda Sanchez
Assistant City Attorney
City of San Antonio
9800 Airport Boulevard, MO 63
San Antonio, Texas 78216

OR2009-13263A

Dear Ms. Sanchez:

This office issued Open Records Letter No. 2009-13263 (2009) on September 21, 2009. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision is substituted for Open Records Letter No. 2009-13263 and serves as the correct ruling.

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# 363230 (COSA# 09-0811).

The City of San Antonio (the "city") received a request for all proposals submitted in response to a specified request for proposals. Although you take no position as to whether the submitted information must be released to the requestor, you state that the submitted documents may contain proprietary information subject to exception under the Act. Accordingly, you provide documentation showing that the city notified HKG Duty Free Shops, LLC ("HKG") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code

§ 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received arguments from HKG. We have considered the submitted arguments and reviewed the submitted information.

You state you have withheld or released most of the requested information pursuant to a previous ruling issued by our office in Open Records Letter No. 2009-06398 (2009), but you have submitted HKG's information at the request of HKG. Because HKG did not submit comments in response to the request at issue in Open Records Letter No. 2009-06398, the information released in the previous ruling included HKG's information. However, we note that HKG was the requestor in the previous ruling. As such, HKG's proprietary interests were not implicated by the request for information at issue in the previous ruling. Accordingly, because circumstances have changed regarding HKG's information, the city may not rely upon the previous ruling as a previous determination for HKG's information, and therefore, we will address the arguments submitted by HKG. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). HKG claims a portion of the submitted information contains personal financial information. We note that 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). Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

We next consider HKG's arguments under section 552.110 of the Government Code. HKG claims section 552.110(b) of the Government Code for portions of the submitted information. Section 552.110(b) protects "[c]ommerical 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 § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999). HKG states none of the information at issue is available in the public domain or accessible by the general public. Upon review, we find that HKG has shown how release of a portion of its financial information would result in substantial competitive injury to the company. Thus, the city must withhold the financial information of HKG that we have marked under section 552.110(b). However, we find that HKG has made only conclusory allegations that release of any of its remaining information at issue would cause HKG substantial competitive harm. Accordingly, the city may not withhold any of the remaining information of HKG on the basis of section 552.110(b).

We note that section 552.136 of the Government Code is applicable to some of the remaining submitted information.¹ Section 552.136(b) provides that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). We have marked insurance policy numbers and routing numbers that the city must withhold under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.110(b) and section 552.136 of the Government Code. The remaining 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, or call the Office of the Attorney General's Open Government Hotline, toll free,

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 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).

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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 363230

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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