



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2009

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-15829

Dear Ms. Njuguna:

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# 360619 (PIR # 16036).

The City of Houston (the "city") received a request for all information regarding a specified funding request on an apartment rehabilitation project. You state the city will release some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Shiraz Inwood Oaks, L.L.C. ("Shiraz"). Accordingly, pursuant to section 552.305 of the Government Code, you have notified Shiraz of the request and of the company's right 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 received comments from Shiraz. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes, including section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, . . . tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination

of the existence, or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). We have marked the tax return information the city must withhold under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses section 901.457 of the Occupations Code.¹ Chapter 901 of the Occupations Code, the Public Accountancy Act, addresses the licensing and regulation of accountants. Section 901.457(a) pertains to the accountant-client privilege and provides the following:

A license holder or a partner, member, officer, shareholder, or employee of a license holder may not voluntarily disclose information communicated to the license holder or a partner, member, shareholder, or employee of the license holder by a client in connection with services provided to the client by the license holder or a partner, member, shareholder, or employee of the license holder, except with the permission of the client or the client’s representative.

Occ. Code § 901.457. Shiraz argues that a portion of its financial information was prepared by its accountant and is, therefore, protected by the accountant-client privilege. We note, however, that section 901.457 only governs the circumstances under which licensed accountants may disclose information communicated to them by their clients in connection with the accountants’ services. *Id.* Section 901.457 does not address the public disclosure of information held by the client or the client’s representative. Here, Shiraz is the client with regards to the accountant-client communications at issue. Section 901.457 does not prohibit Shiraz from publicly disclosing the communications at issue. Consequently, section 901.457 does not make the communications provided to the city by Shiraz confidential. We therefore conclude that the city may not withhold this information under section 552.101 of the Government Code on the basis of section 901.457 of the Occupations Code. 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), *478 at 2 (1987)* (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

Shiraz also raises section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that

¹Although Shiraz cites to section 901.451 of the Occupations Code in its brief, we understand Shiraz to raise section 901.457 for the accountant-client privilege, as that is proper section for the substance of its argument.

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.*; Open Records Decision No. 661 (1999).

Shiraz asserts that release of portions of the remaining submitted information would cause it substantial competitive injury. Upon review, we find Shiraz has only provided conclusory arguments that release of any of the remaining information would cause it substantial competitive harm. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982). Accordingly, we determine none of the remaining submitted information may be withheld under section 552.110(b) of the Government Code.

Shiraz also raises section 552.131 of the Government Code. Section 552.131 is applicable to economic development information and provides in relevant 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:

(1) a trade secret of the business prospect; or

(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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov’t Code § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “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.” *Id.* Thus, the protection provided by section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. Shiraz has failed to explain how its information relates to economic

development negotiations involving the company and the city. *See id.* § 552.131. Accordingly, we conclude that the city may not withhold any portion of Shiraz's information pursuant to section 552.131(a) of the Government Code. Further, we note that section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the city does not assert section 552.131(b) as an exception to disclosure, we conclude that no portion of the remaining information is excepted under section 552.131(b) of the Government Code.

Section 552.136 of the Government Code provides that "[n]otwithstanding 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." *Id.* § 552.136. Accordingly, the city must withhold the information we have marked under section 552.136 of the Government Code.

We note that a portion of the remaining information is excepted from disclosure under section 552.137 of the Government Code.² Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). 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 the e-mail addresses that the city must withhold under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

We note that some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 (1990).*

In summary, the city must withhold the tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the information we have marked under section 552.136 of the Government Code. The city must withhold the e-mail addresses we

²This office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure. The remaining information must be released in accordance with copyright law.

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, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 360619

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Danny M. Sheena, P.E.
The Binz Law Center
1001 Texas Avenue, Suite 240
Houston, Texas 77002
(w/o enclosures)