



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2009

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2009-18248

Dear Ms. Lytle:

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# 365608.

The County of El Paso (the "county") received a request for proposals submitted in response to various requests for proposals and e-mail correspondence from a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Parking Systems of America, L.P. ("PSA") and L&J Parking ("L&J") of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

You assert the submitted information is excepted under section 552.110 of the Government Code. However, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the county's arguments under section 552.110 and none of the submitted information may be withheld on that basis. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (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 (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

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 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, we have not received any correspondence from either PSA or L&J. Thus, neither of these private parties has demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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, 542 at 3 (1990). Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest PSA or L&J may have in it.

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. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the information we have marked is confidential under section 6103(a), and the county must withhold it under section 552.101 of the Government Code.

Section 552.101 also 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).

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find that the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the county must withhold the information we marked under section 552.101 in conjunction with common-law privacy.

In summary, the county must withhold the information we marked under section 552.101 in conjunction with (1) section 6103(a) of title 26 of the United States Code and (2) common-law privacy. The remaining 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, 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/dls

Ref: ID# 365608

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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