



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2011

Mr. Justin D. Gordon
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2011-04570

Dear Mr. Gordon:

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# 413923 (OOG # 024-11).

The Office of the Governor (the "governor") received a request for specified Texas Enterprise Fund documents pertaining to Klein Tools, Inc., or its parent company ZAH Group, Inc. (collectively "ZAH"). Although you take no position with respect to the public availability of the requested information, you state its release may implicate the proprietary interests of ZAH. Accordingly, you state the governor notified ZAH of the request for information and of its right to submit arguments to this office as to why its 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 received comments on behalf of ZAH. We have considered the submitted arguments and reviewed the submitted information.

ZAH argues its owners' names and ownership percentages are protected by common-law privacy. Section 552.101 of the Government Code 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. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, this office has determined an individual's name is generally not private information. *See* Open Records Decision No. 554 at 3 (1990) (stating disclosure of person's name not invasion of privacy). Upon review, we find the ownership percentage information we have marked is confidential pursuant to the owners' common-law right to privacy, and the governor must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the governor may not withhold any portion of the remaining information at issue under section 552.101 on the basis of common-law privacy.

Next, ZAH argues portions of its financial information are excepted from disclosure under 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 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 (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). Upon review, we find ZAH has established portions of its financial summary, which we have marked, constitute commercial or financial information, the release of which would cause the company substantial competitive injury. Accordingly, the governor must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find ZAH has made only conclusory allegations that release of its remaining information would result in substantial damage to its competitive position and has provided no specific factual or evidentiary showing to support such allegations. *See id.*; *see also* Open Records Decision No. 319 at 3 (information relating to organization and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, we determine none of ZAH's remaining information is excepted from disclosure under section 552.110(b).

In summary, the governor must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.110(b) 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 413923

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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