



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2011

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2011-12584

Dear Mr. Bilbie:

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# 428482.

The City of Harlingen (the "city") received a request for "copies of event calendar[s] for Casa de Amista, Hgn Community Center, Casa del Sol, and the Cultural Art Center" from June 16 through August 31, 2011. You claim the requested information is excepted from disclosure under sections 552.101, 552.104, 552.108, 552.136, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. The submitted information consists of calendar entries of individuals who have paid for the use of the specified city

facilities, including the personal addresses and telephone numbers of members of the public. You assert release of this information would violate the privacy of the individuals at issue. This office has determined, however, the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. *E.g.*, Open Records Decision Nos. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy); *see also* Attorney General Opinion GA 0572 at 5 (2007); Open Records Decision No. 385 at 2 (1983) (information about debt private individual owes governmental body is not private). Upon review, we find you have not established any of the submitted information is confidential under common-law privacy. Therefore, the city may not withhold any of the information under section 552.101 of the Government Code on that ground.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has also held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988). Furthermore, section 552.104 generally is not applicable once a competitive bidding situation has concluded and a contract has been executed. *See* Open Records Decision No. 541 (1990).

You assert, "To release to the public the procedures for renting public buildings, information about the parties leasing the buildings, and the times and events for which the public facilities are being leased would harm the [c]ity's position with regard to the [c]ity's efficient use of its facilities." You also assert the release of the information "would put the [c]ity at a great disadvantage because a private vendor would always be able to get the events calendar for months in advance and then try to take the [c]ity's customer's [sic] away." However, we conclude the city has not explained how release of information related to individuals who have reserved and paid for the use of the city facilities would harm the city in a specific competitive situation. *See* ORD 541. Thus, upon review, we find the city has not established the submitted information is excepted from release under section 552.104.

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108.

You generally assert the submitted information is excepted from disclosure under section 552.108 because its release “could, under certain circumstances, create the environment for a law enforcement matter if persons in disputes are seeking to locate times and places where other parties will be so that they will have information as to where and when they can be confronted” and, thus, “to release this information generally about the time and place of private events could lay the groundwork for potential civil disturbances.” You acknowledge, however, that “the information at hand does not specifically fall under section 552.108[.]”

A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not stated that the submitted information pertains to an ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have not met your burden under section 552.108(a)(1) or 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. It is not clear to this office, nor have you explained, the requested information pertains to a concluded criminal investigation. Thus, you have not met your burden under section 552.108(a)(2) or 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as you have not shown the submitted information relates to a threat against a police officer. *See Gov't Code § 552.108(a)(3)*. Lastly, you do not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the city may not withhold any of the submitted information under section 552.108.

Section 552.136 of the Government Code provides the following:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. You assert the submitted cellular telephone numbers of members of the public are access device numbers for purposes of section 552.136 because cellular telephone numbers

are personal to the person to whom they belong. For example, a cell telephone number once given to the person becomes their [sic] personal cell number and by law may be maintained by them throughout their [sic] life, whether they [sic] change cell phone systems or companies. Additionally, cell phone are [sic] used to access all types of online businesses for bill paying and purchasing of goods. Finally, some of these private persons may be on “do not call” lists and release of the number could assist parties attempting to get around these restrictions.

Upon review, however, we find you have not explained how the cellular telephone numbers at issue consist of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, you have failed to demonstrate the applicability of section 552.136 to these numbers, and the city may not withhold them on that ground.

Section 552.148 of the Government Code provides the following:

(a) In this section, “minor” means a person younger than 18 years of age.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

(1) the name, age, home address, home telephone number, or social security number of the minor;

(2) a photograph of the minor; and

(3) the name of the minor's parent or legal guardian.

Id. § 552.148. You assert section 552.148 is applicable to some of the requested information because “[m]any of the events listed on the events calendar involve birthday parties, quincenearas or sweet sixteen parties for minors” and “[h]ere we have the [c]ity scheduling private events at its facilities for party-like events for minors.” However, upon review, we find you have not established the city maintains the information related to these privately-scheduled events “for purposes related to the participation by a minor in a recreational program or activity.” *See id.* § 552.148(b); *cf.* Civ. Prac. & Rem. Code § 75.001(3) (listing various recreational activities). Thus, we conclude you have failed to establish any of the submitted information is excepted from disclosure under section 552.148. Accordingly, the city must release the submitted information to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bs

Ref: ID# 428482

Enc. Submitted documents

c: Requestor
(w/o enclosures)