



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 23, 2013

Ms. Cheryl K. Byles  
Assistant City Attorney  
Office of the City Attorney  
The City of Fort Worth  
1000 Throckmorton Street, 3d Floor  
Fort Worth, Texas 76102

OR2013-06649

Dear Ms. Byles:

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# 484841 (FW PIR No. W023480).

The City of Fort Worth (the "city") received a request for certain information regarding all non-profit organizations whose proposals were approved by the city in the year 2012, including a copy of the approved proposal. You inform us you have released some of the requested information to the requestor. You claim some of the submitted information is exempted from disclosure under section 552.101 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified the third parties of the request and of their right to submit comments to this office as to why the submitted information should not be released to the requestor.<sup>1</sup> See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory

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<sup>1</sup>The third parties the city notified are as follows: Lena Pope Home, Inc. ("Lena Pope"); The Women's Center of Tarrant County, Inc. ("The Women's Center"); Day Resource Center for the Homeless; Cornerstone Assistance Network; The Ladder Alliance; Camp Fire USA First Texas Council; CASA of Tarrant County, Inc.; Clayton Child Care, Inc. d/b/a Clayton YES!; Northside Inter-Community Agency, Inc.; REACH, Inc.; Senior Citizen Services; Tarrant County Housing Partnership, Inc.; YWCA Fort Worth & Tarrant County; Cassata High School; Presbyterian Night Shelter; Mental Health America of Greater Tarrant Co.; Tarrant Area Food Bank; Tarrant County Samaritan Housing, Inc.; Cenikor Foundation; Alliance for Children, Inc.; NewDay Services for Children & Families; and Santa Fe Adolescent Service d/b/a Santa Fe Youth Services.

predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from The Women's Center and an attorney for Lena Pope. We have considered the submitted arguments 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." Gov't Code § 552.101. This section encompasses information other statutes make confidential. Federal tax returns and tax return information are generally confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a). Nevertheless, section 6104 of title 26 of the United States Code provides in part:

(d) Public inspection of certain annual returns[. –

(1) In general. – In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a) –

(A) a copy of –

(I) the annual return filed under section 6033 . . . by such organization,

. . .

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

. . .

(2) 3-year limitation on inspection of returns. – Paragraph (1) shall apply to an annual return filed under section . . . 6033 only during the 3-year period beginning on the last day prescribed for filing such a return (determined with regard to any extension of time for filing).

*Id.* § 6104(d)(1)-(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501 tax-exempt organization must generally make its annual information returns available for public inspection for a period of three years from the last day prescribed for filing. The public disclosure requirement of section 6104(d) for a section 501(c) or (d) organization also applies to certain other specified tax filings in addition to the annual return. *See* 26 U.S.C. § 6104(d)(1)(A). You inform us the submitted information contains Form 990 returns filed by the organizations at issue. The returns reflect that each organization at issue is an organization subject to section 501(c). The returns also reflect they were filed less than three years prior to the date of the city's receipt of the instant request for information. Therefore, the submitted Form 990 returns are subject to public disclosure pursuant to section 6104 of title 26 of the United States Code and must be released.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from The Women's Center and Lena Pope explaining why their submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests in the submitted information. *See id.* § 552.110; 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 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in it.

Next, we note Lena Pope argues against the disclosure of information the city has not submitted to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information submitted as responsive by the city.<sup>2</sup> *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical

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<sup>2</sup>As we are able to make this determination, we need not address Lena Pope's argument against the disclosure of this information under section 552.110(a) of the Government Code.

abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Lena Pope seeks to withhold the names of its staff members and the home and work addresses, phone numbers, and e-mail addresses of its board members under common-law privacy. We note that this is not the type of information that has been found to be highly intimate or embarrassing and of no legitimate public concern. *See* Open Records Decision Nos. 554 at 3 (1990) (public disclosure of an individual's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Accordingly, we find none of this information may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

The Women's Center seeks to withhold the personal resumes, names, and addresses of their employees contained in the submitted information. However, The Women's Center has not directed our attention to any law, nor are we aware of any law, that excepts the information from disclosure, nor has The Women's Center submitted any arguments explaining why the information should not be released. *See* Gov't Code § 552.305(d)(2)(B); *see, e.g., id.* § 552.110; ORDs 661 at 5-6, 552 at 5, 542 at 3. Therefore, we have no basis to conclude any of The Women's Center's remaining information is excepted from disclosure.

Finally, we understand the city will redact the insurance policy numbers you have marked under section 552.136(c) of the Government Code.<sup>3</sup> Section 552.136(b) of the Government Code states "[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). This office has determined an insurance policy number is an access device for purposes of section 552.136. *See id.*

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<sup>3</sup>Section 552.136(c) of the Government Code authorizes a governmental body to redact from the requested information it discloses, without the necessity of requesting a decision from this office, an access device number. Gov't Code § 552.136(c) (governmental body may redact information described by subsection 552.136(b) from any information the governmental body discloses without necessity of requesting decision from attorney general); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information pursuant to section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

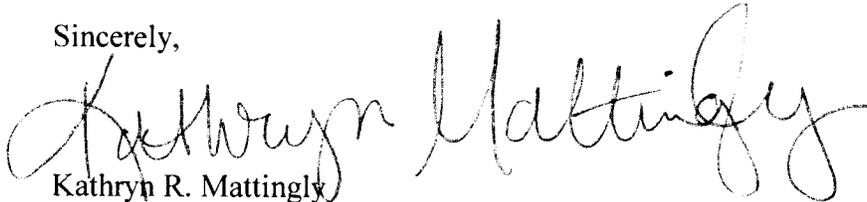
§ 552.136(a) (defining "access device"). We have marked bank account and routing numbers and insurance policy numbers which the city must withhold under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.136 of the Government Code. 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](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,



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KRM/bhf

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