



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2014

Ms. June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2014-09856

Dear Ms. Harden:

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# 525597 (OAG PIR No. 14-38465).

The Office of the Attorney General (the "OAG") received a request for the following eight categories of information for the Employer Repository Maintenance and Verification award: (1) all bidders' technical proposals; (2) evaluation forms for technical proposals; (3) oral presentation materials and handouts; (4) submitted references; (5) bidders' cost proposals, including BAFO; (6) evaluation forms for cost proposals; (7) request for proposal and all related attachments; and (8) the awarded contract and amendments. You state, although the OAG takes no position with respect to the submitted information, its release may implicate the interests of MAXIMUS Human Services, Inc.; Policy Studies, Inc.; and Young Williams P.C. (collectively, the "third parties"). Accordingly, you state, and provide documentation demonstrating, the OAG notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on

interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-06257 (2013). In that ruling, we determined the OAG must withhold the submitted information under section 552.139 of the Government Code. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, the OAG must continue to rely on Open Records Letter No. 2013-06257 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not identical to the information that was subject to Open Records Letter No. 2013-06257, we will address the public availability of this information.

Next, 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from any of the third parties explaining why their information should not be released to the requestor. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate the third parties' interests, and none of the submitted information may be withheld on that basis. *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.

We note portions of the submitted information are subject to common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which

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<sup>1</sup>The Office of the Attorney General 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).

protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *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) (mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373. Upon review, we find the submitted documents contain information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the OAG must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, the OAG must continue to rely on Open Records Letter No. 2013-06257 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. The OAG must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The OAG must release the remaining information; however, any information protected by copyright may only 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 525597

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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