ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2014

Mr. Riley Woods
Staff Counsel
Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555

OR2014-15958

Dear Mr. Woods:

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# 535690.

The Brazos River Authority (the "authority") received a request for the bid submitted by a named individual with Provident Realty. You state the authority will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of the submitted information may implicate the proprietary interests of the named individual. Accordingly, you state, and provide documentation showing, you notified the named individual of the request for information and of his right to submit arguments to this office as to why the submitted 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 have received comments from a representative of the named individual. We have considered the submitted arguments and reviewed the submitted information.

The named individual raises section 552.101 of the Government Code in conjunction with common-law privacy for some of the submitted information. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 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). However, we note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information at issue may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

The named individual raises section 552.104 of the Government Code for some of the remaining information. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). As the authority does not argue section 552.104 is applicable, we will not consider the named individual's claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the authority may not withhold any of the remaining information under section 552.104 of the Government Code.

The named individual contends some of the remaining information is excepted from disclosure under section 552.110 of the Government Code, which protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Upon review, we find the named individual has not made the specific factual or evidentiary showing required by section 552.110(b) that release of the remaining information at issue would cause substantial competitive harm. *See* ORD 661. Therefore, none of the remaining information at issue may be withheld under section 552.110(b).

In summary, the authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The authority must release the remaining information.

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, 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,

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 535690

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Leon J. Backes
3rd Floor
10210 North Central Expressway
Dallas, Texas 75231
(w/o enclosures)