



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2015

Mr. Jimmie B. Todd
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Counsel for Odessa Hispanic Chamber of Commerce
3800 East 42nd Street, Suite 409
Odessa, Texas 79762-5982

OR2015-22717

Dear Mr. Todd:

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# 583347.

The Odessa Hispanic Chamber of Commerce (the "chamber"), which you represent, received a request for (1) all itineraries, receipts, reports, e-mails, and documents concerning the expenditure of public funds related to the Mexico Initiative; (2) a line-item budget for the chamber; (3) the chamber's bylaws; (4) all documents, including meeting minutes and e-mails, related to the resignation of a named individual; and (5) all documents submitted to the Odessa Development Corporation's compliance committee relating to the Mexico Initiative. You claim the submitted information is excepted from disclosure under sections 552.102, 552.110, and 552.131 of the Government Code. You also state the release of some of this information may implicate the proprietary interests of Gerente Iniciativa Energia/Chihuahua ("Energia"). Accordingly, you state you notified Energia of the request for information and of its right to submit arguments to this office as to why the information at issue 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 considered the exceptions you claim and reviewed the submitted information.

Although the chamber argues portions of the submitted information are excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). Thus, we do not address the chamber's argument under section 552.110. Further, 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 information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Energia explaining why the information at issue should not be released. Therefore, we have no basis to conclude Energia has a protected proprietary interest in the information at issue. *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 chamber may not withhold the information at issue on the basis of any proprietary interest Energia may have in the information.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find you have failed to demonstrate the applicability of section 552.102(a) to any of the information at issue. Accordingly, the chamber may not withhold any of the information at issue under section 552.102(a).

Section 552.131 of the Government Code relates to economic development information and provides, in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). Section 552.131(a) protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. There has been no demonstration by the third party that any of the information at issue constitutes a trade secret or that release of any of the information at issue would cause the third party substantial competitive harm. *See* ORDs 661 at 5-6, 552 at 5. Thus, the chamber may not withhold any of the information at issue under section 552.131(a) of the Government Code.

Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. Gov't Code § 552.131(b). You state the information at issue relates to ongoing negotiations with various business prospects. You further state the chamber has not reached an agreement with any potential business prospect. However, upon review, we find you have not demonstrated any of the information at issue consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the submitted information may be withheld under section 552.131(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.¹ *See id.* § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be

¹The 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).

withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, then the chamber must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the cellular telephone service, then the chamber may not withhold the marked information under section 552.117(a)(1).

Section 552.136 of the Government Code provides, “[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); *see id.* § 552.136(a) (defining “access device”). Accordingly, the chamber must withhold the credit card numbers we have marked under section 552.136.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We note section 552.137(c) provides section 552.137(a) does not apply to an e-mail address provided to a governmental body by a person who has or seeks a contractual relationship with the governmental body or by the contractor’s agent. *Id.* § 552.137(c)(1)-(2). Accordingly, the chamber must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release or subsection (c) applies.

In summary, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, then the chamber must withhold the cellular telephone numbers we marked under section 552.117(a)(1) of the Government Code. The chamber must withhold the credit card numbers we have marked under section 552.136. The chamber must withhold the e-mail addresses we have marked under section 552.137, unless the owners of the e-mail addresses affirmatively consent to their release or subsection (c) applies. 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.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,

A handwritten signature in cursive script that reads "Cole Hutchison".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 583347

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)