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ATTORNEY GENERAL OF TEXAS

November 25, 2015

Mr. John B. Atkins
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Underwood Law Firm, P.C.
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2015-24796

Dear Mr. Atkins:

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# 588639.

The Amarillo Economic Development Corporation (the "corporation"), which you represent, received a request for documents reflecting tax dollars spent on Hilmar Cheese Corp. ("Hilmar") and any dairy supplying milk to Hilmar. You claim portions of the submitted information are excepted from disclosure under sections 552.110 and 552.131 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Hilmar. Accordingly, you state, and provide documentation showing, you notified Hilmar of the request for information and of its 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 considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects 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). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the corporation must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.110(b) of the Government Code protects “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Hilmar states it is a private company. Hilmar explains portions of the submitted information consist of an outline of the company’s strategy and financial model on how to succeed in new market locations. Upon review, we find Hilmar has demonstrated release of the information at issue would cause the company substantial competitive harm. Accordingly, the corporation must withhold the information we marked under section 552.110(b) of the Government Code.¹

In summary, the corporation must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The corporation must withhold the information we marked under section 552.110(b) 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.

¹As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/dls

Ref: ID# 588639

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)