



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2015

Mr. Luciano Ozuna Jr.
City Manager
City of Alamo
420 North Tower Road
Alamo, Texas 78516

OR2015-25189

Dear Mr. Ozuna:

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# 589780.

The City of Alamo (the "city") received a request for the minutes of a specified meeting of the Alamo Economic Development Council (the "council") and copies of the council's active loan agreements for an eight year period, including payment history, liens, and jobs to be provided. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ Additionally, you state the city notified 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 received comments

¹We note, although you raise section 552.131 of the Government Code, you make no argument to support this exception. Therefore, we presume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

from Soleil Luna Investments LLC (“Soleil”).² We have considered the submitted arguments and reviewed the submitted information.

In this instance, the requestor is a city commissioner. There is no indication the requestor is requesting the information in his official capacity as a city commissioner. Therefore, we find the requestor is making the present request in his personal capacity as a member of the public. Accordingly, we will address the submitted arguments against disclosure.

Next, we note you have not submitted any information pertaining to the requested minutes of the specified council meeting. Thus, to the extent such information existed and was maintained by the city on the date the city received the request for information, we presume the city has released it. If not, the city must do so at this time. *See* Gov’t Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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 received comments from only Soleil explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the interests of any remaining third parties the city notified, 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.

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. 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. We note

²Although Soleil raises section 552.0225(b) of the Government Code, this section is not an exception to public disclosure. Rather, section 552.0225(b) enumerates categories of information relating to a governmental body’s investments that are public and not excepted under the Act. Gov’t Code § 552.0225(b).

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). This office has 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).

In Open Records Decision No. 373, this office determined financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was “information deemed confidential” by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Additionally, in Open Records Decision No. 523, we held the credit reports, financial statements, and financial information included in loan files of individual veterans participating in the Veterans Land Program were excepted from disclosure by the common-law right of privacy. Similarly, we have concluded financial information relating to an applicant for housing assistance satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The second requirement of the common-law privacy test requires the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe ordinarily this interest will not be sufficient to justify the invasion of the applicant’s privacy that would result from disclosure of information concerning his or her financial status. *See* ORD 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate the existence of a public interest that will overcome the second requirement of the common-law privacy test. However, whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. *See* ORDs 523, 373.

Open Records Decision Nos. 373 and 523 draw a distinction between the confidential “background financial information furnished to a public body about an individual” and “the basic facts regarding a particular financial transaction between the individual and the public body.” Open Records Decision Nos. 523, 385 (1983). Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373. *See* Open Records Decision Nos. 600, 523, 481 (1987) (individual financial information concerning applicant for public employment is closed), 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are public). We note, however, this office has concluded the names and present addresses of current or former residents of a public housing development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision No. 268 (1981); *see also* Open Records Decision Nos. 600 at 9-10, 545, 489 (1987), 480. Whether the public has a legitimate interest in an individual’s sources of income must be determined on a case-by-case basis. *See* ORD 373 at 4; *see also* ORDs 600, 545.

Upon review, we find you have failed to demonstrate the information you have marked is highly intimate or embarrassing information that is not of legitimate public interest. Therefore, none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Soleil raises section 552.131(a)(2) of the Government Code, which provides the following:

(a) Information is excepted from the requirements of Section 552.021 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:

...

(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.

Gov’t Code § 552.131(a)(2). We note section 552.131(a)(2) is co-extensive with section 552.110(b) of the Government Code. *See id.* § 552.110(b) (excepts from disclosure commercial or financial information upon specific factual showing release would cause company substantial competitive harm). Thus, it 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. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Upon review, we find Soleil has not explained the release of the information at issue would cause it substantial competitive harm. Accordingly, the city may not withhold Soleil's information under section 552.131(a)(2). As no further exceptions to disclosure have been raised, the city must release the submitted 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 589780

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)