



November 18, 2002

Mr. Chris Kadas
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2002-6571

Dear Mr. Kadas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172336.

The Texas Department of Licensing and Regulation (the "department") received a request for "Oscar De La Hoya's purses for his two fights in Texas" against named individuals on certain dates. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

The department informs this office, and provides documentation showing, that it has notified two interested third parties whose proprietary interests may be implicated by the request, of the request for information. *See* Gov't Code 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither of the notified parties has submitted to this office reasons explaining why its information should not be released. Therefore, the third parties have provided us no basis on which to conclude that the submitted information is excepted from disclosure under section 552.110. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We now address the department's claim under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information covered by the common-law right of privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy, *see* Open Records Decision Nos. 600 (1992), 545 (1990); *see also* Open Records Decision No. 373 (1983) (common-law privacy protects assets and income source information). The documents at issue are Contestant-Promoter contracts. You claim that the contracts constitute personal financial information of the contestant that do not relate to a financial transaction between an individual and a governmental body.¹ Based on your representations and our review of the information, we conclude that the submitted contracts are protected by the right of common-law privacy and must be withheld under section 552.101. As section 552.101 is dispositive, we need not address your claim under section 552.110.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

¹ We note that common-law privacy protects only the rights of individuals, not corporations. *See* Open Records Decision No. 620 (1993) (corporation has no common law privacy interest in its financial information); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

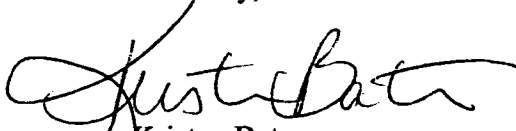
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 172336

Enc. Submitted documents

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