



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2016

Ms. Kerry Wootten
Counsel for the City of Winnsboro
Russell & Wootten, P.C.
P.O. Box 1135
Mount Pleasant, Texas 75456-1135

OR2016-18547

Dear Ms. Wootten:

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# 622735.

The City of Winnsboro (the "city") received a request for (1) all information pertaining to the purchase of a specified lot for development of an equipment rental business, and (2) all policies and procedures for the Winnsboro Economic Development Corporation relating to lending or grants, specifically purchase-money loans or grants for the purchase of land or buildings for start-up funding. We understand you do not have some of the requested information.¹ You claim the submitted information is excepted from disclosure

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ

under section 552.131 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Double C Equipment ("Double C"). Accordingly, you inform us you notified Double C of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 Double C. We have considered the submitted arguments and reviewed the submitted information.

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:

...

(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)(2), (b). Section 552.131(a) of the Government Code protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. Upon review, we find Double C has not demonstrated release of the information at issue would cause it substantial competitive harm. *See* Open Records Decision Nos. 661 at 5-6 (1999). Thus, the city may not withhold the information at issue under section 552.131(a)(2).

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

dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

person. Gov't Code § 552.131(b). You assert the submitted information is excepted from disclosure under section 552.131(b). However, upon review, we find no portion of the information at issue pertains to a financial or other incentive offered to a business prospect by a governmental body or another person. Accordingly, the city may not withhold the information at issue under section 552.131(b).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted 1099 form constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code. As such, the city must withhold the information we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. As no other exceptions to disclosure have been raised, 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

²The 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).

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 black ink that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 622735

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)