



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2016

Ms. Lauren Downey and Ms. June B. Harden
Assistant Attorney Generals
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2016-25698

Dear Ms. Downey and Ms. Harden:

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# 634634 (PIR Nos. 16-45118, 16-45066, 16-45172, and 16-45441).

The Office of the Attorney General (the "OAG") received four requests for information pertaining to a specified requests for proposals.¹ The OAG states it will release most of the responsive information. Although the OAG takes no position as to whether the submitted information is excepted under the Act, the OAG states release of this information may implicate the proprietary interests of AMS Public Interest; Arrowhead Films & Video, Inc. ("Arrowhead"); Elephant Productions, Inc. ("Elephant"); GOAL Productions; Greatest Common Factory; Rising Fall; Social Interactive, Inc. ("SII"); Smith Pictures; The Production Companies, Inc. ("TPC"); and White Lens Productions, Inc.² Accordingly, the OAG states, and provides documentation showing, it notified these third parties of the requests for information and of their rights 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

¹We note the OAG sought and received clarification of the information requested in one of the requests. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request).

²The OAG informs us it will release information pertaining to SII. The OAG informs us, and provides documentation showing SII does not object to release of any of its information and therefore the OAG is withdrawing the portion of its request for a ruling that pertains to SII.

exception in the Act in certain circumstances). We have received arguments from Arrowhead and TPC and have considered the arguments of Elephant. We have considered the submitted arguments and reviewed the submitted information.

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, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests in the submitted information. *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 OAG may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Arrowhead and Elephant state they have competitors. Arrowhead asserts release of its information at issue would cause substantial competitive harm to its ability to compete successfully in its industry. Elephant asserts release of its information at issue would cause the company substantial competitive harm by allowing its competitors to obtain a competitive advantage. After review of the information at issue and consideration of the arguments, we find Arrowhead and Elephant have established the release of their information at issue would give advantage to competitors or bidders. Thus, we conclude the OAG may withhold the information we indicated under section 552.104(a) of the Government Code.³

TPC argues some of its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

TPC argues its information at issue consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find TPC has demonstrated the information we indicated constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the OAG must withhold the information we indicated under section 552.110(b) of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”⁴ 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. Additionally, 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). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the OAG must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the OAG must withhold the bank account number and insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

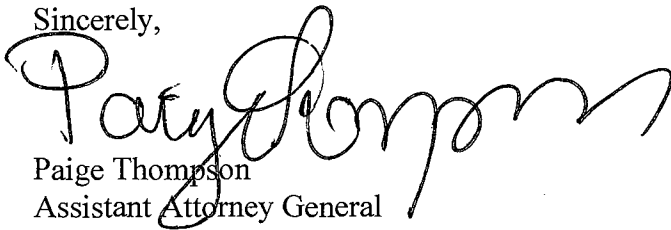
wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the OAG may withhold the information we indicated under section 552.104(a) of the Government Code. The OAG must withhold the information we indicated under section 552.110(b) of the Government Code. The OAG must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The OAG must withhold the bank account number and insurance policy numbers in the remaining information under section 552.136 of the Government Code. The remaining information must be released; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 634634

Enc. Submitted documents

c: Requestors
(w/o enclosures)

1 Third Party
(w/o enclosures)