



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2017

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

OR2017-03840

Dear Mr. Bowman:

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# 646659 (PIR# 20170225).

The Texas Department of Licensing and Regulation (the "department") received a request for six categories of information pertaining to a specified event. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code.¹ You also state release of the submitted information may implicate the proprietary interests of Top Rank, Inc. ("Top Rank"). Accordingly, you state, and provide documentation showing, you notified Top Rank 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 received comments from Top Rank. We have considered the submitted arguments and reviewed the submitted information.

¹Although you raise section 552.110 of the Government Code, we note that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from another person). Thus, we do not address the department's assertion of section 552.110, but we will consider a third party's assertion of that exception.

Initially, Top Rank argues the submitted information is not responsive to the request for information. However, we note the Act requires a governmental body to make a good-faith effort to relate a request to information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). Because the department has submitted information for our review, we find the department has made a good-faith effort to submit information that is responsive to the request, and we will address the arguments against disclosure of this information.

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 (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 3 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual’s mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). In this instance, the information at issue involves promoter-contestant contracts. You claim the information at issue constitutes personal financial information of the contestants that do not relate to financial transactions between the individuals and a governmental body. Based on your representations and our review, we conclude the information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.104(a) of the Government Code excepts 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. Top Ranks states it has competitors. Top Rank informs this office that release of the information at issue would allow a competitor “to undercut Top Rank in

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

the marketplace when competing for broadcast opportunities.” After review of the information at issue and consideration of the arguments, we find Top Rank has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have marked under section 552.104(a) of the Government Code.³

In summary, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information we have marked under section 552.104(a) of the Government Code. The department must release the remaining information.

You ask this office to issue a previous determination permitting the department to withhold information pertaining to combative sports purse amounts under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

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

Ref: ID# 646659

Enc. Submitted documents

c: Requestor
(w/o enclosures)