



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2017

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

OR2017-07204

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# 652112 (TDLR #PIR-20170377).

The Texas Department of Licensing and Regulation (the "department") received two requests from the same requestor for information pertaining to specified combative sports events. 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 third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not

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 of the Government Code.

be released.² 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 considered the submitted arguments and reviewed the submitted information.

Initially, 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) 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 any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have a protected proprietary interest 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 department may not withhold the submitted information on the basis of any proprietary interest the third parties may have in the 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. This section encompasses section 151.027 of the Tax Code. Section 151.027(a) provides confidentiality for information collected under the Limited Sales, Excise, and Use Tax Act. Tax Code § 151.027(a). Section 151.027(b) provides for the confidentiality of information obtained during the course of an examination of a taxpayer's books. *Id.* § 151.027(b). However, section 151.027 applies only to information furnished to and reviewed by the Texas Comptroller of Public Accounts (the "comptroller") during its investigation of a taxpayer. *Id.* § 151.027; *see* Open Records Decision No. 520 (1989) (section 151.027 applies only to information in comptroller's custody, not to information in another governmental body's possession). Thus, section 151.027 applies only to the comptroller, and not the department. See Tax Code § 151.027; ORD 520. Accordingly, as the submitted information is not in the custody of the comptroller, we find it is not subject

²The notified third parties consist of: Alliance Media Group; Aztlan Boxing Promotions; Back Alley Promotions; Bellator Sport Worldwide, LLC; Belts of Honorius; Cavazos Boxing Promotions, Inc.; CDM Boxing Association; Dallas Petroleum Club; Fury Fighting Championships; G & M Boxing; Garcia Promotions; Gatica; Genesis Combat Sports Amateur Association; Golden Boy Promotions; Golden Eagle Promotions; Grande Promotions; Icon Production Group; J.A.B. Latino Promotions; Jesse Rodriguez; Keyser Entertainment; Legacy Promotions; Leija/Battah; Panterita Promotions; Real Estate Council; Savarese Promotions; Scratch Hard Promotions; Silver Promotions; South Texas Fighting Championships – Amateur; STFC; Superior Combative Championships; Superior Combative Championships d/b/a Stephen Lawhorn; TAMI Amateur Combative Sports Promotions, Inc.; TKO Fight Alliance; Texas Clash; Texas Rage; Top Rank; Triple A Promotions; UFC; Underwood Promotions; USACA; Xtreme Combat Productions, LLC; and Xtreme Knockout Amateur Series & Muay Thai.

to section 151.027, and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 171.206 of the Tax Code, which provides that:

Except as provided by Section 171.207, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or
- (2) information, including information about the business affairs, operations, profits, losses, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

Tax Code § 171.206. This provision protects information that is in the possession of the comptroller. As noted above, the information at issue is in the possession of the department. Therefore, no portion of the information at issue is confidential under section 171.206 of the Tax Code. Accordingly, no portion of the submitted information may be withheld under section 552.101 of the Government Code on this basis.

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). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). While you argue the release of the portions of the submitted information showing the number of tickets sold, revenue generated from media outlets, and figures for gross receipts could harm the third parties by giving an advantage to their competitors, such an interest in protecting the information belongs to the third parties and not the department. Therefore, we find the department may not withhold the submitted information under section 552.104(a) of the Government Code. As no further exceptions to disclosure have been raised, the submitted 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 information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/sb

Ref: ID# 652112

Enc. Submitted documents

c: Requestor
(w/o enclosures)

42 Third Parties
(w/o enclosures)