



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 11, 2019

Mr. Rick Guerrero  
Houston-Galveston Area Council  
P.O. Box 22777  
Houston, Texas 77227-2777

OR2019-03885

Dear Mr. Guerrero:

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# 747826.

The Houston-Galveston Area Council (the "council") received a request for five categories of information pertaining to the Gulf Coast Workforce System contracts that resulted from a specified request for proposals. You state the council has released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Arbor E&T, LLC d/b/a Rescare Workforce Services; BakerRipley; Career and Recovery Resources, Inc. ("CRR"); Beechcrest 13 Work d/b/a Texas Works 13; Collaborative for Children; DB Grant Associates, Inc ("DB"); Dynamic Educational Systems, Inc. ("DESI"); Employment and Training Centers, Inc.; Grace Christian School; Gulf Coast Trades Center; Houston Center for Literacy; Inspiring Innovations, Inc.; Interfaith of the Woodlands; Knowledge First Empowerment; Earning Designs, Inc.; Northwest Assistance Ministries; Public Consulting Group, Inc.; Ser-Jobs for Progress of the Texas Gulf Coast, Inc.; and Serco of Texas of the request for information and of their 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 CRR, DB, and DESI. 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 remaining interested third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the remaining interested 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 council may not withhold any of the information at issue on the basis of any proprietary interest the remaining third parties may have in it.

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. CRR, DB, and DESI state they have competitors. In addition, CRR, DB, and DESI state release of their information would give advantage to their competitors. After review of the information at issue and consideration of the arguments, we find CRR, DB, and DESI have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the council may withhold CRR's, DB's, and DESI's information under section 552.104(a) 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." <sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as the following:

[A] taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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[.]

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), *dismissed in part, aff’d in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the council must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also 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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990).*

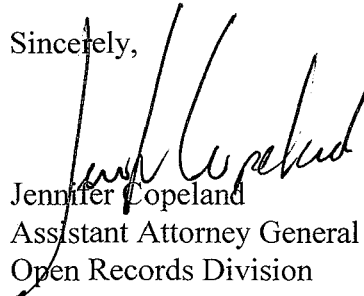
Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the council must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the council may withhold the CRR’s, DB’s, and DESI’s information under section 552.104(a) of the Government Code. The council must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The council must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

Ref: ID# 747826

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

19 Third Parties  
(w/o enclosures)