



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2020

Ms. Katie Leininger
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581

OR2020-21220

Dear Ms. Leininger:

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# 841372.

The City of Pearland (the "city") received a request for the proposal submitted by Construction Masters of Houston, Inc. ("Construction Masters"), regarding a specified project. The city states it released some information to the requestor. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city informs us release of the submitted information may implicate the proprietary interests of Construction Masters. Accordingly, the city states, and provides documentation showing, it notified Construction Masters of the request for information and of its right to submit arguments to this office. *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 Construction Masters. We have considered the submitted arguments and reviewed the submitted information.

Construction Masters raises section 552.110 of the Government Code for a portion of its information.¹ Section 552.110(c) of the Government Code excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual

¹ Although Construction Masters cites to former sections 552.110(a) and 552.110(b) of the Government Code in its brief, we understand it to raise current sections 552.110(b) and 552.110(c) of the Government Code based on the substance of its arguments.

evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(c). Construction Masters argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Construction Masters has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we marked under section 552.110(c) of the Government Code.²

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. 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. The common-law right to privacy encompasses personal financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we find the city has failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the information we marked under section 552.110(c) of the Government Code. The city must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open->

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

[government/members-public/what-expect-after-ruling-issued](#) or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 841372

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Third Party
(w/o enclosures)