



PINELLAS
COUNTY
ECONOMIC DEVELOPMENT

COMMISSION AGENDA:

10-16-12 #32

M E M O R A N D U M

TO: The Honorable Chairman and
Members of the Board of County Commissioners

FROM: Mike Meidel, Economic Development Director

DISTRIBUTION: Robert S. LaSala, County Administrator
Assistant County Administrators

DATE: October 3, 2012

SUBJECT: Confidentiality of Qualified Target Industry (QTI) Incentive Applicants

This memorandum provides further background information to the memo from Dennis Long to the Board of County Commissioners dated August 2, 2012 (attached) and addresses the concerns discussed by the Board during their regular meeting of September 6, 2012.

State law (Sec. 288.075, Florida Statutes) currently provides that "If a private corporation, partnership, or person requests in writing before an economic incentive agreement is signed that an economic development agency maintain the confidentiality of information concerning plans, intentions or interests of such private corporation, partnership, or person to locate, relocate or expand any of its business activities in this state, the information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution for 12 months after the date an economic development agency receives a request for confidentiality or until the information is otherwise disclosed, whichever occurs first." It also states that "An economic development agency may extend the period of confidentiality for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state."

In our experience, nearly every company, for both attraction and retention projects, insists on submitting such a request prior to their disclosing any information to our economic development staff. This is common practice throughout the United States. A company may have multiple reasons for insisting on confidentiality, including the following:

- At the time an incentive package is offered, the firm is simply considering future options. The company may later decide that a move or expansion would be too costly, too disruptive or wouldn't achieve the desired goals.
- Knowledge that a company may be seeking property in a certain area can have an impact on the real estate market, driving up sales prices and lease rates.

- Rumors and speculation can cause shareholders or investors to get nervous, affecting stock prices or financing costs.
- Competitors may be able to gain insights into the business's strategies and finances, allowing them to leap-frog technologies or grab market share while the firm is busy with relocation plans.
- Employees of the business may leave the organization in the face of uncertainty over the company's future, worries about losing their jobs, or fears of having to relocate.
- Customers may become concerned about possible supply interruptions or service delivery problems during the transition.
- Communities previously screened out, or never before considered, in the site selection process may bring stronger counter-offers, risking the loss of the project from Pinellas.
- The firm may be inundated with calls from Realtors, or from salespeople trying to interest the company in new insurance, copiers, legal and accounting services, phone systems, even season tickets and gym memberships, causing unwanted frustration and distractions.

At the time of the QTI incentive vote, the Board is provided with the number of jobs the firm must create in order to receive the full incentive, the wage level of those jobs (115%, 150% or 200% of the local average), a description of the product or service that the firm intends to provide, and information on the direct and indirect economic impact of the operation on the county's economy. Enterprise Florida and the county economic development staff will have already done extensive due diligence research on the firm.

Individual members of the Board of County Commissioners can choose to vote against any proposed incentive brought before them, for any reason, including the non-disclosure of the company's name. The Board could also vote to establish a policy that no incentive request be placed on the agenda unless the company's name is made public. However, for the reasons outlined above, such a policy would likely eliminate Pinellas County from consideration for any relocation or expansion project that would qualify for state incentives. Once word of this policy got out to the Tampa Bay Partnership, Enterprise Florida and the global site selector community, Pinellas County Economic Development staff would likely never be informed of the company's site search, even if that company were currently located in Pinellas. There would be no way for us to determine how many projects excluded Pinellas, because we would never learn of their plans, or we would only learn after they had made a public announcement to locate in another community.

Qualified Target Industry (QTI) incentives are performance-based. No funds are transferred to the company until they have achieved their agreed-upon wage and job creation targets and have paid an equivalent amount in taxes. When the Board approves an incentive, it simply becomes part of a proposal; one of several the company will receive from other governmental jurisdictions, including at least one from outside of Florida. If the firm decides to accept the Pinellas proposal, they will negotiate and sign a final incentive agreement with the State of Florida, and the Florida Department of Economic Opportunity will issue a Final Project Order (FPO).

Several Commissioners have expressed concern that public funds should not be expended without the public disclosure of the name of the company. Under current Florida law, the name of the firm becomes public information no later than 180 days from the issuance of the Final Project Order. Due to the reimbursement-based structure of the QTI incentive, funds are not budgeted or expended until at least the following fiscal year. Therefore, the name of the company will always be public information well in advance of the Commission having approved a budget containing those funds.

Staff recommends continuation of the policy established by the Commission on September 9, 2009: that firms be given the option of whether or not to disclose their name during the initial QTI approval process.

ATTACHMENT 1

TO: The Honorable Chair and Members of the
Board of County Commissioner

THROUGH: James L. Bennett, County Attorney

FROM: Dennis R. Long, Chief Assistant County Attorney

SUBJECT: Confidentiality of Economic Development Records

DISTRIBUTION: Maureen Freaney, Assistant County Administrator
Mike Meidel, Director, Economic Development

DATE: August 2, 2012

This memorandum provides the legal background relating to economic development records that are confidential and/or exempt from the Florida public records laws. Any questions relating to the impacts on a change in policy can be directed to Mike Meidel, who is prepared to address the policy implications and consequences of revising the current policies in place.

It should be noted at the outset that the applicable statutes state that the economic development records discussed herein are both confidential and temporarily or permanently exempt from the public records law disclosure requirements. There is a difference between confidential and exempt information under Florida law. Information deemed confidential is not subject to inspection by the public, may be released only to those persons authorized in the statute, and the agency has an obligation to take reasonable steps to ensure confidential records are protected from an unauthorized release. Exempt records are exempt from mandatory disclosure requirements, and in many circumstances the agency is not prohibited from disclosing the records to the public.

The protected company information is retained by the County "Economic Development Agency," which the Board of County Commissioners ("Board") determined in Resolution 06-196 to be the Pinellas County Economic Development Department. Sec. 288.075, Florida Statutes (the "Act"), recognizes several different categories of confidential/exempt records, including:

- (1) Company trade secrets, which are defined in Chapter 688, Florida Statutes (definition set out in Exhibit A).
- (2) Company proprietary confidential business information, which is defined in the Act (definition set out in Exhibit A).
- (3) Company information in possession of an Economic Development Agency pursuant to an economic incentive program including sales information, individual employee information, and company tax information requirements (statutory information set out in Exhibit A).

- (4) Information concerning plans, intentions, or interests to locate, relocate or expand any of the company's business operations in the state (statutory information set out in Exhibit A).

Category (1) information is confidential and exempt without any time limitation, Category (2) information is confidential and exempt until publicly available or is no longer treated as confidential by the company, and Category (3) information is confidential and exempt for a period not to exceed the term of the incentive agreement, or upon the termination of the incentive agreement.

The Category (4) information above relating to plans to locate, relocate or expand is the information that the Board regularly deals with as part of the QTI process. Eighty percent (80%) of the funding for this economic incentive program is provided by the State Department of Economic Opportunity ("DEO"), and the remaining twenty percent (20%) funding coming from local funding from taxes paid by the company only if its employment requirements and wage targets are satisfied. When the Board last considered the policy implications of the confidentiality provisions, the Act provided that the information was confidential and exempt for twelve (12) months after the Economic Development Agency received a request for confidentiality or the information was made public, whichever occurred first. A twelve (12) month extension was available upon the request of the company. However, pursuant to Chapter 2012-28, Laws of Florida, effective in March 2012, the Legislature amended the Act to provide that the information identifying the company will remain confidential and exempt for 180 days after the final project order, the date specified in the project order, or the information is otherwise disclosed, whichever occurs first. The "project order" is the incentive agreement approved between the DEO and the company that finalizes the terms of the incentives. This 2012 amendment would accelerate the date the information is made public in many cases.

Sanctions for violating the confidentiality provisions include civil damages, as well as criminal (second degree misdemeanor charges) for any person that is an "employee of an economic development agency" that violates the statute.

The policy options include:

- (a) Continue the current practice in place, which gives the company the full benefit of the confidentiality provisions, which are subject to the new time limitations effective in 2012. This includes granting to the company the option of disclosing its name to the Board.
- (b) Reconstitute the Economic Development Agency to include the Board.
- (c) Do not approve economic incentives for companies that request confidentiality. This could be a general policy or addressed by the Board on a case-by-case basis, and could apply to either relocations or expansions of existing businesses, or both.

The Board last considered this issue on September 9, 2009. At that time, the consensus was to continue the current practice in place.

Exhibit A

Trade Secret definition from Sec. 688.002, F.S. (Category 1 information):

- (4) Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:
- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
 - (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Proprietary Confidential Business Information definition from Sec. 288.075(1)(b), F.S. (Category 2 information):

- (b) “Proprietary confidential business information” means information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this section; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:
- 1. Business plans.
 - 2. Internal auditing controls and reports of internal auditors.
 - 3. Reports of external auditors for privately held companies.

Economic Incentive program information from Sec. 288.075(6)(a), F.S. (Category 3 information):

- (a) The following information held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period not to exceed the duration of the incentive agreement, including an agreement authorizing a tax refund or tax credit, or upon termination of the incentive agreement:
- 1. The percentage of the business’s sales occurring outside this state and, for businesses applying under s. 288.1045, the percentage of the business’s gross receipts derived from Department of Defense contracts during the 5 years immediately preceding the date the business’s application is submitted.
 - 2. An individual employee’s personal identifying information that is held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.
 - 3. The amount of:
 - a. Taxes on sales, use, and other transactions paid pursuant to chapter 212;
 - b. Corporate income taxes paid pursuant to chapter 220;
 - c. Intangible personal property taxes paid pursuant to chapter 199;

- d. Insurance premium taxes paid pursuant to chapter 624;
- e. Excise taxes paid on documents pursuant to chapter 201;
- f. Ad valorem taxes paid, as defined in s. 220.03(1); or
- g. State communications services taxes paid pursuant to chapter 202.

However, an economic development agency may disclose in the annual incentives report required under s. 288.907 the aggregate amount of each tax identified in this subparagraph and paid by all businesses participating in each economic incentive program.

Economic Incentive Program information including QTI company information from 288.075(6)(b), Florida Statutes (Category 4 information):

(b)1. The following information held by an economic development agency relating to a specific business participating in an economic incentive program is no longer confidential or exempt 180 days after a final project order for an economic incentive agreement is issued, until a date specified in the final project order, or if the information is otherwise disclosed, whichever occurs first:

- a. The name of the qualified business.
 - b. The total number of jobs the business committed to create or retain.
 - c. The total number of jobs created or retained by the business.
 - d. Notwithstanding s. 213.053(2), the amount of tax refunds, tax credits, or incentives awarded to, claimed by, or, if applicable, refunded to the state by the business.
 - e. The anticipated total annual wages of employees the business committed to hire or retain.
2. For a business applying for certification under s. 288.1045 which is based on obtaining a new Department of Defense contract, the total number of jobs expected and the amount of tax refunds claimed may not be released until the new Department of Defense contract is awarded.