



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2005

Ms. Debra G. Rosenberg  
Atlas & Hall, L.L.P.  
P. O. Box 3725  
McAllen, Texas 78502-3725

OR2005-05218

Dear Ms. Rosenberg:

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# 225993.

The Lower Rio Grande Valley Workforce Development Board (the "board"), which you represent, received a request for a copy of a specified winning proposal. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, although you take no position with respect to the proprietary nature of the requested information, you claim that the requested information may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, the board notified the interested third party, ACS State and Local Solutions, Inc. ("ACS"), of the board's receipt of the request and of its right to submit arguments to us as to why any portion of the submitted information should not be released. *See Gov't Code §552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances).* We have considered arguments made and reviewed the submitted information.

Initially, we address the board's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). The board received the instant request for information on March 17, 2005. However, you did not request a decision from this office until April 5, 2005. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301 of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The exception you raise, section 552.104 of the Government Code, is a discretionary exception and, as such, does not constitute a compelling reason to withhold information that is presumed public. *See, e.g.*, Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 522 at 4 (1989) (discretionary exceptions in general). Accordingly, the board may not withhold any of the submitted information under section 552.104 of the Government Code. However, a compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Thus, a claim under section 552.110 of the Government Code can provide a compelling reason to overcome the presumption of openness.

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). Because ACS did not submit arguments in response to the section 552.305 notice, we have no basis to conclude that this company's information is excepted from disclosure on a proprietary basis. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade

secret), 542 at 3 (1990). Accordingly, the board may not withhold the submitted proposal on the basis of any proprietary interest ACS may have in the information.

The submitted information contains a social security number. The 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990.<sup>1</sup> See 42 U.S.C. § 405(c)(2)(C)(viii)(I) We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the board pursuant to any provision of law enacted on or after October 1, 1990.

Some of the submitted information contains insurance policy numbers.<sup>2</sup> Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The board must, therefore, withhold the insurance policy numbers that we have marked under section 552.136.

We note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).

In summary, a social security number may be confidential under federal law. The board must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor; however, in releasing

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<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information that is protected by copyright, the board must comply with applicable copyright law.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

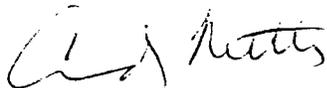
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/AEC/krl

Ref: ID# 225993

Enc. Submitted documents

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