



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2006

Mr. W. Montgomery Meitler
Senior Attorney
Texas Department of Family and Protective Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2006-00406

Dear Mr. Meitler:

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# 240282.

The Texas Department of Family and Protective Services (the "department") received a request for a specific winning proposal submitted in response to a department issued Request For Proposal and the name of the winning bidder. You state that you released the name of the winning bidder and the contract dollar amount. You claim that portions of the submitted information, which you have marked, are excepted from disclosure under section 552.136 of the Government Code. However, you make no arguments and take no position as to whether the remaining submitted information is excepted from disclosure. You, instead, indicate that this information may be subject to a third party's proprietary interest. Pursuant to section 552.305 of the Government Code, you have notified Forward Edge Inc. ("Forward") of the request and its right to submit arguments to this office as to why the information at issue 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 Act in certain circumstances).* We have considered the exception you claim and reviewed the submitted information.

Initially, we note that 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Forward explaining how the release of any of the submitted information will affect its proprietary interest. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interest of Forward. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, none of the submitted information may be withheld based on the proprietary interest of Forward.

Now we turn to your arguments regarding the submitted information. You claim that the marked information is excepted from public disclosure under section 552.136 of the Government Code. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. Upon review, we agree that the department must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code. As you do not raise any other exceptions against disclosure, the remaining information must be released.

In releasing the remaining information, we note that the department states that it does not have a copy of the information at issue in the electronic format requested. Section 552.228 of the Government Code requires that a governmental body provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase software or hardware. *See* Gov't Code § 552.228(b)(1), (2). In this instance, the requested medium is a floppy or compact disc. Although the department states it does not have a copy of the information at issue on a floppy or compact disc, you have not stated that

the department does not have the technological capability to provide the remaining information in the requested format. Accordingly, we find that if the department has the technological capability to provide the remaining information in the requested format, it must do so. However, if the department does not have the technological capability, it may release the remaining information in the submitted paper format.

We note that although you request a previous determination regarding the insurance policy numbers, we decline to issue such a ruling at this time. Accordingly, 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).

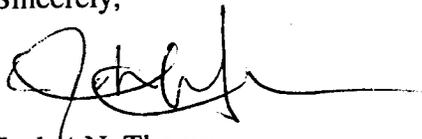
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Texas 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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID #240282

Enc. Submitted documents

c: Sandra Hunt
Drug Screens Etc.
c/o W. Montgomery Meitler
Senior Attorney
Texas Department of Family and Protective Services
P. O. Box 149030
Austin, Texas 78714-9030
(w/o enclosures)

Jim Turnage
Forward Edge Inc.
703 McKinney Ave., Ste. 212
Dallas, TX 75202
(w/o enclosures)

Romeo Laurel
Forward Edge Inc.
1209 Genoa Red Bluff
Pasadena, TX 77504
(w/o enclosures)