



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2008

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2008-16036

Dear Ms. Rangel:

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# 328448.

The Fort Bend County Purchasing Office (the "county") received two requests from the same requestor for proposals, evaluation/score sheets, and price/cost sheets related to RFP numbers 08-080 and 08-081. You claim that some of the requested information is excepted from disclosure under section 552.136 of the Government Code. Additionally, you state, and provide documentation showing, that the county notified the interested third parties of the request for information and of each company's right to submit arguments to this office as to why the requested information should not be released.¹ *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 received correspondence from Pro Tech and Sentinel.² We have considered the claimed exceptions and reviewed the submitted information.

¹The county notified the following third parties pursuant to section 552.305: Pro Tech Monitoring, Inc. ("Pro Tech"); Sentinel Offender Services ("Sentinel"); BI Behavioral Interventions; Biometric Corp.; G4S Justice Services, Inc.; and isecuretrac.

²Sentinel notified this office that the company had no objections to public disclosure of its information.

Initially, we note that some of the submitted information is subject to a previous ruling issued by this office. On November 7, 2008, this office issued Open Records Letter No. 2008-15395 (2008), in which we ruled that the county must withhold some of the information at issue pertaining to Pro Tech under section 552.110 of the Government Code and must release the remaining information. You do not inform us that the pertinent facts and circumstances have changed since the issuance of that prior ruling. Thus, we determine that the county must continue to rely on our ruling in Open Records Letter No. 2008-15395 as a previous determination and withhold or release the requested information in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

We next 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 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 decision, this office has received comments only from Pro Tech and Sentinel. None of the remaining third parties have submitted to this office any reasons explaining why their submitted information should not be released. Therefore, these remaining companies have failed to provide us with any basis to conclude that they have protected proprietary interests in any of the submitted information. *See* 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, we conclude that the county may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

You seek to withhold insurance policy numbers contained in the submitted information under section 552.136 of the Government Code. Section 552.136 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. Accordingly, the county must withhold the insurance policy numbers we have marked under section 552.136.

Finally, we note that some of the materials at issue appear to 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 protected by copyright. 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 materials protected by copyright, 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, the county must continue to rely on our ruling in Open Records Letter No. 2008-15395 as a previous determination and withhold or release the requested information in accordance with that decision. Insurance policy numbers must be withheld under section 552.136 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 328448

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jason Abernathy
Mr. Steve Chapin
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(w/o enclosures)

Mr. Mark Contestabile
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