



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2009

Ms. Laura Le Blanc
Public Information
TCLEOSE
6330 U.S. Highway 290 East, Suite 200
Austin, Texas 78723

OR2009-01224

Dear Ms. Le Blanc:

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# 333902.

The Texas Commission on Law Enforcement Officer Standards and Education (the "commission") received a request for proposals submitted in response to a specified RFO. While you raise section 552.110 of the Government Code as a possible exception to disclosure for the requested information, you make no arguments as to whether the requested information is excepted under that section. Furthermore, because release of the requested proposals may implicate the proprietary interests of third parties, the commission was required by section 552.305 of the Government Code to notify the companies whose proposals are at issue of the request and of their opportunity to submit comments to this office explaining why the requested information should be withheld from disclosure. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have reviewed the submitted representative sample of information.¹

Initially, we must address the commission's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). The commission received the present request for information on October 20, 2008. However, the commission did not ask for the attorney general's opinion until November 21, 2008, and did not submit the information required under section 552.301(e) until November 21 and 25, 2008. Thus, we find the commission failed to comply with both its ten- and fifteen-business-day deadlines.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interests of the third parties. Further, some of the submitted information is subject to section 552.136 of the Government Code.² Because section 552.136 can provide a compelling reason for non-disclosure, we will also consider the applicability of this exception to the submitted information.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 letter, we have not received comments from any of the interested third parties explaining why the requested proposals should not be released. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests in the requested information. *See id.* § 552.110; 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 (1990). Consequently, the commission may not withhold the requested proposals based on the proprietary interests any of the interested third parties may have in them.

We note the submitted information contains a bank account number and routing number which belong to an individual other than the requestor. Section 552.136 of the Government Code states "[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(b). Accordingly, the commission must withhold the bank account and routing number we have marked under section 552.136 of the Government Code.

Finally, we note some of the submitted information is 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).

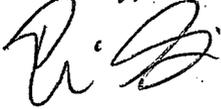
In summary, the commission must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.³

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.

³We note that the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 333902

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Victor J. Quinones, Jr.
QuinServe Technologies, Inc.
888 West Sam Houston Parkway S, Suite 270
Houston, Texas 77042
(w/o enclosures)

Sam Houston State University
1806 Avenue J. Administration Building, Room 208
Huntsville, Texas 77341
(w/o enclosures)

Mr. Michael Sousa
Vangent - Human Capital Division
c/o Laura Le Blanc
TCLEOSE
6330 U.S. Highway 290 East, Suite 200
Austin, Texas 78723
(w/o enclosures)

Mr. Robert L. Reeves
McLane Advanced technologies
4001 Central Pointe Parkway
Temple, Texas 76504
(w/o enclosures)

Mr. Michael L. Brown
Skillsnet
3295 North Highway 77
Waxahachie, Texas 75165
(w/o enclosures)

Mr. Adolph Gwynn
RWD Technologies LLC
RWD Applied Technology Laboratory
5521 Research Park Drive
Baltimore, Maryland 21228
(w/o enclosures)

Texas Engineering Extension Service
301 Tarrow
College Station, Texas 77840
(w/o enclosures)

Mr. Bradley T. Knott
HAVA Partners, LLC
8701 Georgia Avenue, #404
Silver Spring, Maryland 20910
(w/o enclosures)