



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2009

Mr. James Downes
Assistant County Attorney
Harris County Attorney's Office
2525 Holly Hall, Suite 190
Houston, Texas 77054

OR2009-06085

Dear Mr. Downes:

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# 342196.

The Harris County Purchasing Agent (the "county") received a request for the proposals related to 401(k) and 457 plan administrative services. You claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code.¹ You also explain the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the county notified Diversified Investment Advisors, Fidelity Investments, and Nationwide Retirement Solutions, Inc. (collectively the "third parties") of this request for information and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

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

¹ As you have submitted no arguments in support of your assertion of sections 552.104 and 552.110 of the Government Code, we will not address the applicability of those exceptions. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

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, the third parties have not submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests. Therefore, the third parties have not provided us with any basis to conclude they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(b) (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); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the submitted information may not be withheld on this basis.

Section 552.136 states that “[n]otwithstanding any other provision of [the Act], 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. An access device number is one that 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. *Id.* Upon review of the submitted information, we find that the county must withhold some of the information, which we have marked, under section 552.136 of the Government Code. For the remaining information you have marked, you have failed to demonstrate this information constitutes access device numbers used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. We therefore conclude the county may not withhold any portion of the remaining information under section 552.136 of the Government Code.

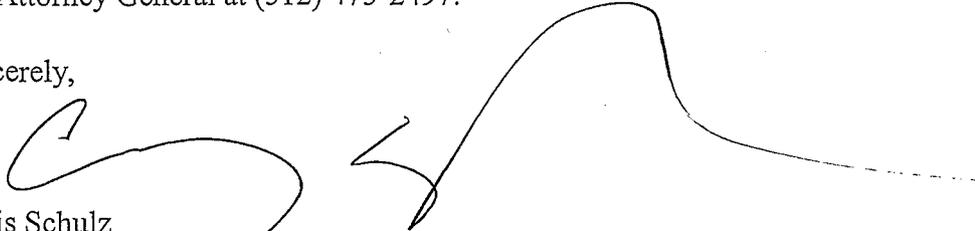
We note that some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection 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, the county must withhold the information we have marked under section 552.136 of the Government Code. The county must release the remaining information, but any copyrighted information may only be released in accordance with copyright law.

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.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 342196

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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