



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2009

Ms. Maria Smith
North Texas Tollway Authority
5900 West Plano Parkway, Suite 100
Plano, Texas 75026

OR2009-14817

Dear Ms. Smith:

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# 358860.

The North Texas Tollway Authority ("NTTA") received a request for the winning proposal for Bid Number 02711-NTT-00-GS-HR, as well as the bid amounts for non-winning bidders. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also explain that this information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified Pinkerton Consulting and Investigations ("Pinkerton") of this request for information and of its right to submit arguments to this office explaining why the submitted 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 your argument and reviewed the submitted information.

Initially, we note that you have not submitted any information responsive to the request for the bid amounts for non-winning bidders. Therefore, to the extent NTTA maintained any information responsive to this requested item on the date NTTA received the request, we assume NTTA has already released such information. If NTTA has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open

Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, it must release information as soon as possible).

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from Pinkerton. Thus, Pinkerton has not demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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). Accordingly, NTTA may not withhold any of the submitted information on the basis of any proprietary interest Pinkerton may have in it. Although NTTA also raises section 552.110, that exception is designed to protect the interests of third parties, as opposed to the interests of governmental bodies. Therefore, NTTA may not withhold any of the submitted information under section 552.110.

Finally, we note that the submitted information contains insurance policy numbers. Section 552.136(b) of the Government Code 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."¹ Gov't Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, NTTA must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code. As you raise no further exceptions against disclosure, NTTA must release the remainder of the submitted information.

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'RTM', with a large, stylized initial 'R' and 'M'.

Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 358860

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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(w/o enclosures)