



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2009

Mr. James Mu
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-16150

Dear Mr. Mu:

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# 361458.

The Texas Department of Criminal Justice (the "department") received a request for all bid proposals submitted for solicitation number 696-PD-9-B033 regarding polygraph services. You claim portions of the submitted bid proposals are excepted from disclosure under sections 552.136 and 552.137 of the Government Code. Furthermore, you state release of the submitted bid proposals may implicate the proprietary interests of Polygraph Services, Inc., Frank E. Chambers, Polygraph Services of South Texas, LaCosta Data Services, Ruiz Protective Services, Inc., and Stacun Investigations and Polygraph Services. Accordingly, you state the department notified these third parties of the request and of their right to submit arguments to this office as to why the submitted bid proposals should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.136 of the Government Code 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. We have marked insurance policy numbers and a bank account number in the submitted bid proposals. We conclude these numbers constitute access device numbers for purposes of section 552.136. We have also marked a credit card number in the submitted bid proposals. The department must withhold the marked insurance policy, bank account, and credit card numbers under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137(c)(2) states an e-mail address "provided to a governmental body by a vendor who seeks to contract with the governmental body" is not excepted from public disclosure. *Id.* § 552.137(c)(2). You claim the e-mail addresses in the remaining information are excepted under section 552.137. In this instance, however, the e-mail addresses at issue were provided to the department by vendors who sought to contract with the department, and are, thus, specifically excluded by section 552.137(c)(2). As such, the e-mail addresses at issue may not be withheld under section 552.137 of the Government Code.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the notified third parties explaining why their submitted proposals should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in their submitted 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)

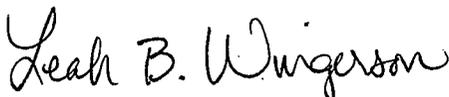
(party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the department may not withhold any portion of the remaining information on the basis of any proprietary interest these third parties may have in the information.

In summary, the department must withhold the marked insurance policy, bank account, and credit card numbers under section 552.136 of the Government Code. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 361458

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

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