



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 28, 2009

Mr. James G. Nolan  
Assistant General Counsel  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2009-18214

Dear Mr. Nolan:

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# 365276 (CPA ORTS# 5949616773).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for 1) all value limitation agreements or amendments to those agreements; 2) all applications under chapter 313 of the Tax Code currently under review by the comptroller; 3) for each agreement, amendment, or application, documents showing the effect on state aid to affected school districts and the calculation of tax benefits to applicants; and 4) all economic impact evaluations prepared under section 313.026 of the Tax Code.<sup>1</sup> You state the comptroller is releasing some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. In addition, you note that release of the requested information may implicate the proprietary interests of third parties.<sup>2</sup> Thus, pursuant to section 552.305 of the Government Code, you have notified the third parties of the request 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); *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 under the Act in

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<sup>1</sup>The requestor has withdrawn his request for all company responses to data requests by the comptroller under section 313.008 of the Tax Code.

<sup>2</sup>The third parties at issue are Enterprise Products Operating, LLC; EC&R Development, LLC; Senate Wind, LLC; TPCO America Corporation; EC&R Papatote Creek II, LLC; and Caterpillar Inc.

certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

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, none of the third parties have submitted comments to this office explaining why their information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes the third parties' protected proprietary information, and none of it may be withheld on that basis. *See, e.g., 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.

The comptroller asserts that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 313.028 of the Tax Code provides as follows:

Information provided to a school district in connection with an application for a limitation on appraised value under this subchapter that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application . . . is confidential and not subject to public disclosure unless the governing body of the school district approves the application. Other information in the custody of a school district or the comptroller in connection with the application, including information related to the economic impact of a project or the essential elements of eligibility under this chapter, such as the nature and amount of the projected investment, employment, wages, and benefits, may not be considered confidential business information if the governing body of the school district agrees to consider the application. Information in the custody of a school district or the comptroller if the governing body approves the application is not confidential under this section.

Tax Code § 313.028. Section 313.025 provides in relevant part:

(b) The governing body of a school district is not required to consider an application for a limitation on appraised value that is filed with the governing body under Subsection (a). If the governing body of the school district does elect to consider an application, the governing body shall deliver three copies

of the application to the comptroller and request that the comptroller provide an economic impact evaluation of the application to the school district. . . . The governing body shall provide to the comptroller . . . any requested information.

*Id.* § 313.025(b). We understand the comptroller to assert that some of the submitted information was provided to a school district in connection with an application for a limitation on appraised value under subchapter B of chapter 313 of the Tax Code and describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the application. Further, you assert the submitted information was submitted by school districts to the comptroller as prescribed by section 313.025(b) of the Tax Code. You state that the districts at issue have not approved the applications. Upon review of the submitted documents, we find that the information we have marked describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property covered by the applications. Therefore, to the extent the marked information was “provided to a school district in connection with an application for a limitation on appraised value,” the comptroller must withhold it under section 552.101 of the Government Code in conjunction with section 313.028 of the Tax Code. The remainder of the submitted information, including the investment totals; numbers of qualifying jobs; average wage rate for qualifying jobs; and benefits for job holders, is not made confidential by section 313.028 and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.136 of the Government Code 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(b). We agree that the bank account number and routing number you have marked are excepted from disclosure under section 552.136. However, the marked check number does not constitute an access device number and may not be withheld based on section 552.136. Accordingly, the comptroller must only withhold the information we have marked under section 552.136 of the Government Code.<sup>3</sup>

Finally, we note that some of the submitted 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. 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

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers and bank routing numbers, under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, to the extent the information we have marked was "provided to a school district in connection with an application for a limitation on appraised value," the comptroller must withhold it under section 552.101 of the Government Code in conjunction with section 313.028 of the Tax Code. The comptroller must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must 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](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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/eb

Ref: ID# 365276

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Mr. Greg Buis  
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