



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2010

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

OR2010-00751

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# 367486.

The Texas Department of Criminal Justice (the "department") received a request for the submitted proposals for RFP number 696-HR-6-P024 for an Employee Assistance Program and information pertaining to the organization that was awarded the contract. You claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. The department takes no position on whether the remaining information is excepted from disclosure, but states that release of this information may implicate the proprietary interests of Alliance Work Partners; Deer Oaks Mental Health Services; MHNNet Behavioral Health; and ValueOptions, Inc; (collectively, the "third parties"). Accordingly, you inform us, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 have reviewed the submitted information.

Initially, 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from any of the third parties. We, thus, have no basis for concluding that any portion of these companies' submitted information constitutes their proprietary 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. Accordingly, the department may not withhold any of the submitted information based on the proprietary interests of the third parties.

The department claims that a portion of the submitted information is excepted under section 552.136 of the Government Code. Section 552.136 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). Upon review, we find that the insurance policy and credit account numbers in the submitted information are access device numbers under section 552.136. Accordingly, the department must withhold the insurance policy numbers and the credit account numbers we have marked under section 552.136 of the Government Code.<sup>1</sup>

Finally, 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. 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 department 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.<sup>2</sup>

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.

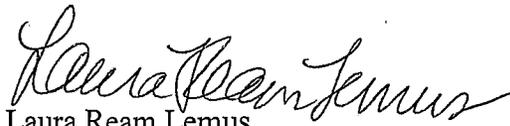
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<sup>1</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>We note the remaining information contains a social security numbers. 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. Gov’t Code § 552.147.

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/jb

Ref: ID# 367486

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Greg Savage  
MHNet Behavioral Health  
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Austin, Texas 78759  
(w/o enclosures)

Mr. Mike Petter  
Alliance Work Partners  
2525 Wallingwood Drive, Building 5  
Austin, Texas 78746  
(w/o enclosures)

Ms. Frances Teran  
Deer Oaks Mental Health Services  
7272 Wurzbach Road, Suite 601  
San Antonio, Texas 78240  
(w/o enclosures)

Mr. Barry Doan  
ValueOptions, Inc.  
One Towne Square, Suite 300  
Southfield, Michigan 48076  
(w/o enclosures)