



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010

Mr. K. Scott Oliver
Corporate Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2010-03135

Dear Mr. Oliver:

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# 371647.

The San Antonio Water System (the "system") received a request for copies of the Statement of Qualifications submitted by engineering firms other than Ford Engineering, Inc. for Solicitation No. Q09-020-MF. You state the system has released most of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state that release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified M.W. Cude Engineers, L.L.C. of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have 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 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, this office has not received comments from M.W. Cude Engineers, L.L.C. explaining why its information should not be released. Therefore, we have no basis to conclude that M.W. Cude Engineers, L.L.C. has a protected proprietary interest in the 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. Accordingly, the system may not withhold any portion of the submitted information based upon the proprietary interests of M.W. Cude Engineers, L.L.C.

We note that a portion of the submitted information is subject to section 552.136 of the Government Code.¹ 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. 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”). Accordingly, we find that the system must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.² As no other exceptions to disclosure have been raised, 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/dls

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

²We 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 under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 371647

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Damien Herrera
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10325 Bandera Road
San Antonio, Texas 78250
(w/o enclosures)