



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2010

Mr. David M. Swope  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2010-04086

Dear Mr. Swope:

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# 373456 (C.A. File: 10GEN0017).

Harris County (the "county") received a request for a copy of a proposal, scoring evaluation, and executed contract pertaining to a specified request for proposals. You indicate you have released some of the information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also explain that the submitted information may contain a third party's proprietary information subject to exception under the Act. Accordingly, you have notified Transcore, L.P. ("Transcore") of this 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); 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 reviewed the submitted information.

Initially, we address the county's arguments 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." Gov't Code § 552.101. The county contends that some of the submitted information may be trademark-protected and thus excepted from disclosure under section 552.101. Section 1127 of title 15 of the United States Code provides that a trademark consists of

any word, name, symbol, or device, or any combination thereof ... used by a person, or ... which a person has a bona fide intention to use in commerce ... to identify and distinguish his or her goods, including a unique product, from

those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

15 U.S.C. § 1127. Thus, a trademark pertains to the public use of information by a business enterprise to distinguish its goods or services from those of its competitors. The mere fact that information contains a trademark does not make the information confidential. Furthermore, the county does not specify any particular provision of law, nor are we aware of any law, that makes any of the submitted information confidential. Accordingly, even if any of the submitted information is trademarked, it may not be withheld from disclosure under section 552.101 on this basis. *See generally* Open Records Decision Nos. 478 (1987), 465 (1987) (statute must explicitly require confidentiality; confidentiality will not be inferred).

The county also asserts that some of the submitted information may be excepted from disclosure under section 552.101 of the Government Code on the basis of federal copyright law. However, copyright law does not make information confidential for purposes of section 552.101. *See* Open Records Decision No. 660 at 5 (1999). A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990). Thus, the county may not withhold the submitted information under section 552.101 of the Government Code in conjunction with copyright law, but any information that is protected by copyright may only be released in accordance with copyright law.

Next, we note 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Transcore has not submitted any comments to this office explaining how release of the submitted information would affect its proprietary interests. On behalf of Transcore, you assert the submitted information is excepted under section 552.110 of the Government Code. However, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Because we have not received comments from Transcore, we have no basis to conclude it has a protected proprietary interest in the remaining information. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, it actually faces competition and substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Therefore, the county may not withhold the information at issue related to Transcore on the basis of any proprietary interest Transcore may have in the information.

We note the remaining 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.”<sup>1</sup> 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, the county must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

In summary, the county must withhold the information we have marked under section 552.136.<sup>2</sup> The remaining information must be released, but any information protected by copyright 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,

A handwritten signature in black ink, appearing to read "Chris Schulz", with a long horizontal flourish extending to the right.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.136, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup> We note that 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, without the necessity of requesting an attorney general decision.

Ref: ID# 373456

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)