



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 22, 2010

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-05744

Dear Mr. Bounds:

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# 376762.

The City of Corpus Christi (the "city") received a request for specified information submitted by each bidder, other than the requestor's company, in relation to a specified request for proposals; the Retirement Store evaluation reports; and the executed record-keeping agreement and plus-fund contract for ICMA Retirement Corporation ("ICMA"). You state that some of the requested information will be made available to the requestor. Although you raise no exceptions to disclosure of the requested information, you state release of portions of this information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, you have notified The Hartford Insurance Company ("Hartford"), ICMA, ING Life Insurance and Annuity Company, Lincoln Financial Group Advisors Corporation, and Nationwide Retirement Solutions ("Nationwide") of the request and of the companies' right to submit arguments to this office as to why the information at issue 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 permitted governmental body to rely on interested-third party to raise and explain applicability of exception to disclosure under certain circumstances).* We received correspondence from Hartford. We have considered Hartford's arguments and reviewed the submitted information.

Initially, we note that most of the submitted information was the subject of a previous request received by the city, as a result of which this office issued Open Records Letter

No. 2010-04466 (2010). We have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based. We therefore conclude that the city must continue to rely on Open Records Letter No. 2010-04466 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We will next address the submitted information not ruled upon in Open Records Letter No. 2010-04466, which consists of Nationwide's proposal response. 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 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, Nationwide has not submitted any comments to this office explaining how release of the information at issue would affect the company's proprietary interests. Accordingly, none of the information pertaining to Nationwide may be withheld on that basis. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

We note that section 552.136 of the Government Code is applicable to some of Nationwide's information.² Section 552.136(b) provides 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." Gov't Code § 552.136(b); see *id.* § 552.136(a) (defining "access device"). This office has concluded that insurance policy numbers constitute access device numbers for the purposes of this exception. We have marked insurance policy numbers the city must withhold under section 552.136.³

We also note that some of Nationwide's information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an

¹As we are able to make this determination, we do not address Hartford's arguments.

²This office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

³We 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 an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also 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).

In summary, the city must continue to rely on Open Records Letter No. 2010-04466 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. With respect to Nationwide's information, the city must withhold the information we have marked under section 552.136 of the Government Code. The rest of Nationwide's information must be released, but any information that is protected by copyright may only 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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 376762

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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