



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

Ms. Jacqueline E. Hojem
Public Information Officer
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2010-08388

Dear Ms. Hojem:

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# 382138 (MTA No. 2010-0400).

The Metropolitan Transit Authority (the "authority") received a request for six categories of information, including bid proposals, pertaining to the maintenance of kiosks, shelters, and the areas surrounding them for a specified time period; maps of certain kiosk and shelter locations; and the personnel file of a named employee. Although you indicate the authority takes no position with respect to the public availability of the submitted bid proposals, you state their release may implicate the proprietary interests of several interested third parties.¹ Accordingly, you state, and provide documentation showing, the authority notified these companies of the request and of each company's 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) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have submitted only bid proposals for our review. To the extent information responsive to the remainder of the request existed on the date the authority

¹The interested third parties are ABM Janitorial Services; BJ's Enterprises; Clifford Jackson Cleaning Service; Ckrystal Clear Janitorial Service; CMS Construction Management & Service; CTJ Maintenance, Inc.; Entrust One Facility Services, Inc.; Environmental Specialized Solutions, Inc.; Everybody's Janitorial Service; H&H Fresh Start; Hardy & Hardy; JE Specialties, Inc.; KSC Services, Inc.; Maintenance of Houston; Nationwide Cleaning Services, Inc.; Pedus Service; Perfect Solutions; Service Master Select; T&M Jones Services, Inc.; and Taylor & Collins Handyman/Repair Service.

received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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, we have not received comments from any of the notified third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests in this 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. Consequently, the authority may not withhold any of the submitted bid proposal information on the basis of any proprietary interests these companies may have in the information.

We note the submitted information contains insurance policy numbers. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.²

Gov't Code § 552.136. We conclude the insurance policy numbers we have marked constitute access device numbers for purposes of section 552.136. Thus, the authority must

²The 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).

withhold the marked insurance policy numbers under section 552.136 of the Government Code.³

We note 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 (1987). 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). Accordingly, the remaining information must be released in accordance with copyright law.

In summary, the authority must withhold the marked insurance policy numbers 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

³We 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# 382138

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Mike Morris
ABM Janitorial Services
2131 Gulf Central Drive
Houston, Texas 77023
(w/o enclosures)

Ms. Brenda Clayton-Dyer
BJ's Enterprises
208 Whitehall Lane
League City, Texas 77573
(w/o enclosures)

Ms. Carprena Denman
Ckrystal Clear Janitorial Service
5106 Noldale Street
Houston, Texas 77016
(w/o enclosures)

Mr. Clifford Jackson
Clifford Jackson Cleaning Service
20726 Deauville Drive
Spring, Texas 77388
(w/o enclosures)

Mr. Harold Jenkins
CTJ Maintenance, Inc.
3601 Conflans
Irving, Texas 75061
(w/o enclosures)

Mr. Raul Valladares
CMS Construction Mgmt. & Service
10510 Wind Walker Trail
Houston, Texas 77095
(w/o enclosures)

Mr. Barry Bancroft
Environmental Specialized
Solutions, Inc.
5501 FM 637
Corsicana, Texas 75109
(w/o enclosures)

Mr. Oscar Portillo
Entrust One Facility Services, Inc.
8002 Hartford
Houston, Texas 77017
(w/o enclosures)

Mr. Morris Arceneaux
Everybody's Janitorial Service
10223 Staghill Drive
Houston, Texas 77070
(w/o enclosures)

Ms. Shanna Johnson
H&H Fresh Start
10522 Holly Glen Drive
Houston, Texas 77016
(w/o enclosures)

Mr. R.W. Hardy, Sr.
Hardy & Hardy
P.O. Box 35982
Houston, Texas 77055
(w/o enclosures)

Mr. James Harris
JE Specialties, Inc.
6031 South Loop East
Houston, Texas 77033
(w/o enclosures)

Mr. Mark Massey
KSC Services, Inc.
2217 Vantage Street
Dallas, Texas 75207
(w/o enclosures)

Mr. Herbert Bhola
Perfect Solutions
8511 Holt Street
Houston, Texas 77054
(w/o enclosures)

Mr. Al Chi
Service Master Select
9310 Meadow Vista Boulevard
Houston, Texas 77064
(w/o enclosures)

Mr. Timothy Jones
T&M Jones Services, Inc.
P.O. Box 16362
Sugarland, Texas 77496-6362
(w/o enclosures)

Mr. Travis Wallace
Maintenance of Houston
4007 Waldo Street
Houston, Texas 77063-5427
(w/o enclosures)

Mr. Stan Wong
Nationwide Cleaning Services, Inc.
12455 Westpark, Suite G1
Houston, Texas 77082
(w/o enclosures)

Mr. John Hendrey
Pedus Service
15700 Export Plaza Drive, Suite F&G
Houston, Texas 77032
(w/o enclosures)

Mr. Johnny Taylor
Taylor & Collins Handyman/Repair
Service
9113 Danewood Drive
Houston, Texas 77016
(w/o enclosures)