



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2010

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-09803

Dear Ms. Chatterjee:

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# 385118.

The University of Texas System (the "system") received a request for information pertaining to the RFP for executive search assistance. You state you have released some information. You also explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Witt/Kieffer, Ford, Hadelman, Lloyd Corp. ("Witt"); Kaye Bassmann International Corp. ("Kaye"); Greenwood/Asher & Associates, Inc. ("Greenwood"); Smith Hertlein ("Smith"); JohnMarch Partners ("JohnMarch"); SSI Inc. ("SSI"); Storbeck/Pimental & Associates ("Storbeck"); and Maxim Healthcare Services ("Maxim") of this request for information and of their 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 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 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from any third party. Thus, these private parties have not demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 the submitted information on the basis of any proprietary interest these companies may have in the information.

We note, however, some of the information is subject to sections 552.101 and 552.136 of the Government Code.¹ Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns). Section 6103(b) defines the term "return information" as:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the system must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

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." 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

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

device"). Therefore, the system must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.²

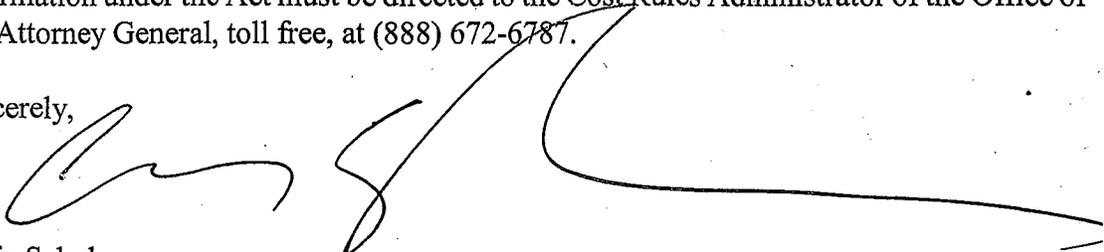
Finally, we note that some of the remaining information at issue appears to be protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information, but a custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). Thus, 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 system must withhold the information we marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The system must withhold the information we marked under section 552.136. 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, 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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/tp

²We 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# 385118

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Alberto Pimentel
Storbeck/Pimentel & Associates
1111 Corporate Center Drive, #106
Monterey Park, California 91754
(w/o enclosures)

Dr. Jan Greenwood
Greenwood/Asher & Associates, Inc.
42 Business Center Drive, Suite 206
Miramar Beach, Florida 32550
(w/o enclosures)

Ms. Cheryl Smith Bryan
Smith Hertlein *d/b/a* Boyden
Global Executive Search
Three Riverway, Suite 1150
Houston, Texas 77056
(w/o enclosures)

Mr. Rick Ferrar
Maxim Healthcare Services
d/b/a Timeline Recruiting
2103 Burlington
Columbia, Missouri 65202
(w/o enclosures)

Ms. Cindy Ornish
Kay Bassmann International Corp.
4965 Preston Park Boulevard
Plano, Texas 75093
(w/o enclosures)

Mr. Gary J. Phleiger
JohnMarch Partners
325 North St. Paul, Suite 3910
Dallas, Texas 75201
(w/o enclosures)

Mr. Dennis M. Barden
Senior Vice President and Director
Education and Non-Profit Practice
Witt/Kieffer, Ford, Hadelman, Lloyd Corp.
2015 Spring Road, Suite 510
Oak Brook, Illinois 60523``
(w/o enclosures)

SSI, Inc. *d/b/a* Spencer Stuart
Attn: Alexis Stiles
401 North Michigan Avenue, Suite 2600
Chicago, Illinois 60611
(w/o enclosures)