



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2010

Mr. David Daugherty
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-10848

Dear Mr. Daugherty:

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# 387352.

Harris County (the "county") received a request for the Transcore Violations Processing contract and proposals related to the project.¹ You state that the county has provided the requestor with some of the requested 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 proprietary information of third parties subject to exception under the Act. Accordingly, you have notified American Traffic Solutions, Inc.; Transcore; and VESystems (collectively the "third parties") 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 considered the exceptions you claim and reviewed the submitted information.

You inform us that the information you have submitted as Exhibit B-1 was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-04086 (2010). In that decision, we ruled that the county must withhold portions

¹You state that the county sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

of the information at issue under section 552.136 of the Government Code and release the remaining information. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the county must continue to rely on Open Records Letter No. 2010-04086 as a previous determination and withhold or release the same information in accordance with the previous determination. *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).

Next, 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, none of the third parties have submitted comments to this office explaining how release of the submitted information would affect their proprietary interests. On behalf of the third parties, 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 the third parties, we have no basis to conclude they have a protected proprietary interest in the submitted 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 on the basis of any proprietary interest the third parties may have in the information.

We note the remaining information contains Texas license plate numbers, images of license plates, license plate expiration dates, and vehicle identification numbers. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle title or registration issued by an agency of this state[.]"² Gov't Code § 552.130(a)(2). Therefore, the county must withhold the information we have marked under section 552.130 of the Government Code.³

In summary, the county must continue to rely on Open Records Letter No. 2010-04086 as a previous determination and withhold or release the same information in accordance with the previous determination. The county must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be

²The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 Texas license plate number and the portion of a photograph that reveals a Texas license plate number, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

released, but any information 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 387352

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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