



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2010

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2010-13054

Dear Ms. McGowan:

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# 391636 (ORR# 9464).

The Dallas Independent School District (the "district") received a request for the bids submitted in response to the request for proposals regarding moving services. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state that release of the requested information may implicate the proprietary interests of Central Transportation Systems ("Central"), Garrett's Moving & Storage, Inc. ("Garrett's"), Move Solutions, Ltd. ("Move Solutions"), Texas Moving Co., Inc. ("Texas Moving"), and SKYE Building Services ("SKYE") (collectively, the "third parties"). Accordingly, you inform us, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 received arguments from SKYE. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. *See* Gov't Code § 552.305(d)(2)(B). Although we have received correspondence from Move Solutions and Texas Moving indicating each company would submit arguments against disclosure, we have received no such arguments. Furthermore, Central and Garrett have not submitted arguments to this office explaining why any portion of their submitted information should not be released to the requestor. Therefore, we have no basis to conclude

that the release of any portion of the submitted information relating to these companies would implicate their proprietary interests. *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). Accordingly, we conclude the district may not withhold any portion of Central, Garrett, Move Solutions, and Texas Moving's information on the basis of any proprietary interests that they may have in the information.

SKYE argues its proposal is excepted from disclosure under section 552.110(b) of the Government Code. Although the district also states the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

After reviewing its arguments and the information at issue, we find SKYE has made only conclusory allegations that release of its information would cause the company substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations. *See* Gov't Code § 552.110; ORD Nos. 661 at 5-6, 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, market studies, experience, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the district may not withhold any of the information at issue under section 552.110(b).

We note the submitted information contains insurance policy numbers that are subject to section 552.136 of the Government Code.¹ Section 552.136(b) 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); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are "access device" numbers for

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

purposes of section 552.136. Thus, the district must withhold the insurance policy numbers we have marked in the submitted proposals under section 552.136 of the Government Code.² The remaining submitted information must be released.

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 H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 391636

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Pat Zagurski
President
Move Solutions, Ltd
1473 Terre Colony Court
Dallas, Texas 75212
(w/o enclosures)

Mr. Tim King
Vice President
Central Transportation Systems
3200 Irving Boulevard
Dallas, Texas 75247
(w/o enclosures)

²We 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 an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ms. Susan Parker
Relocation Specialist
Texas Moving Co, Inc
908 North Bowser Road
Richardson, Texas 75081-2869
(w/o enclosures)

Mr. James P. Sutherland
Managing Director
SKYE Building Services
2201 Long Prairie, Suite 107 - #833
Flower Mound, Texas 75022
(w/o enclosures)

Mr. William Garrett Ware
President
Garrett's Moving & Storage, Inc.
12684 International Parkway
Dallas, Texas 75228
(w/o enclosures)