



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 7, 2010

Mr. Keith A. Martin  
Corporate Counsel  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449

OR2010-13543

Dear Mr. Martin:

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# 392827.

The San Antonio Water System (the "system") received a request for the following categories of information pertaining to two specified system revenue bonds: (1) documentation showing the "cost of issuance"; (2) records stating amounts, commissions, fees, or discounts given to managers, book runners, co-managers, financial advisers, and underwriters; (3) documentation on any designation policies or minimum designation amounts applicable to the bond issuance; (4) documentation regarding the amount, percentage, or proportion of the bond sale or bond orders handled by each firm; (5) policies, instructions, requirements, directions, requests, or suggestions given to firms involved in the issuance regarding who should be hired as co-managers, underwriters, or subcontractors; (6) documentation on closing statements, closing memoranda, and final pricing information; and (7) information discussing the hiring of a specified entity as manager, co-manager, financial adviser, or underwriter, including any submitted bids or proposals. You state you will release some of the requested responses to request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties.<sup>1</sup>

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<sup>1</sup>The interested third parties are Loop Capital Markets, LLC; Banc of America Securities; UBS; and Banco Popular de Puerto Rico.

Accordingly, you state, and provide documentation showing, you notified the third parties of the 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); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have not submitted information responsive to categories one through six of the request for information. To the extent any information responsive to these portions of the request existed on the date the system received the request, we assume the system has released it. If the system has not released any such information, it 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 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 its submitted information should not be released. Therefore, we have no basis to conclude that any third party has a protected proprietary interest in the submitted 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 (1990). Accordingly, the system may not withhold the submitted information on the basis of any proprietary interest the third parties may have in the information.

The submitted documents include information that is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 provides, "[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 insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the system must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

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<sup>2</sup>The 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).

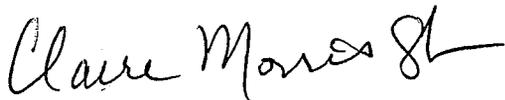
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). 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.

In summary, the system must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor, but any information that is protected by copyright must be released only 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/tp

Ref: ID# 392827

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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