



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2010

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

OR2010-14347

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# 394298 (C.A. File 10GEN1401).

The Harris County Purchasing Agent (the "county") received a request for all bid proposals and other records regarding negotiations and contracts pertaining to Request for Proposal Job Nos. 01/0064, 03/0062, and 08/0237.<sup>1</sup> Although you state the county takes no position with respect to the public availability of the requested information, you state its release may implicate the proprietary interests of Electronic Transaction Consultants Corporation ("ETC"), Florida Traffic Control Devices, Inc. ("FTCD"), and TransCore, LP ("TransCore"). Accordingly, you state, and provide documentation showing, the county notified these companies of the request and of each company's right to submit arguments to this office as to why the requested 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

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<sup>1</sup>You state, and provide documentation showing, the county received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if 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).

have received comments from ETC and FTCD. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the county's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the county received the original request for information on June 24, 2010, and the clarified request for information on July 1, 2010. You did not, however, request a ruling from this office until July 19, 2010. Furthermore, you did not submit a copy of the information requested until August 3, 2010. Thus, we find the county failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether or not any of the submitted information is excepted from disclosure under the Act.

Next, you state the responsive information pertaining to Request for Proposal Job No. 01/0064 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-11607 (2010). In that decision, this office found the county must continue to rely on our decision in Open Records Letter No. 2001-4655 (2001), which stated the county must withhold portions of ETC's bid proposal under section 552.110(b) of the Government Code and release the rest of ETC's proposal and the final contract entered into between the county and ETC. As we have no indication the law, facts, and circumstances on which the ruling in Open Records Letter No. 2010-11607 was

based have changed, we find the county must continue to rely on Open Records Letter No. 2010-11607 as a previous determination and withhold or release the information at issue in accordance with that ruling.<sup>2</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, 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).

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 TransCore explaining why its submitted information should not be released. Therefore, we have no basis to conclude TransCore has protected proprietary interests in its 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 county may not withhold any of TransCore's submitted information on the basis of any proprietary interests it may have in the information.

FTCD asserts the financial information in its submitted bid proposal information, contract information, and correspondence is excepted from disclosure pursuant to section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. Section 552.104, however, is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. See Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government), 522 (1989) (discretionary exceptions in general). As the county does not seek to withhold any information pursuant to this exception, we find section 552.104 is not applicable to FTCD's information. See ORD 592 (governmental body may waive section 552.104).

FTCD also claims its submitted financial information is excepted under section 552.110(b) of the Government Code, which 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,

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<sup>2</sup>As our ruling for this information is dispositive, we need not address ETC's arguments against disclosure.

not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; ORD 661 at 5-6.

Upon review of FTCD's arguments and information at issue, we find FTCD has made only general conclusory assertions that release of its financial information would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because 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). We note the pricing information of a company contracting with a governmental body is generally not excepted under section 552.110. *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, none of FTCD's financial information may be withheld under section 552.110(b).

We note the submitted information contains insurance policy, bank account, and bank routing 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.<sup>3</sup>

Gov't Code § 552.136. We conclude the insurance policy, bank account, and bank routing numbers we have marked constitute access device numbers for purposes of section 552.136. Thus, the county must withhold the marked information under section 552.136 of the Government Code.<sup>4</sup>

We note some of the remaining information 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. Thus, the remaining information must be released in accordance with copyright law.

In summary, the county must continue to rely on Open Records Letter No. 2010-11607 as a previous determination and withhold or release the information at issue in accordance with that ruling. The county must withhold the marked insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code. 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](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

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<sup>3</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>We note this office 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, bank account, and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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

Ref: ID# 394298

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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