



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2010

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2010-18312

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# 402506.

The Dallas Independent School District (the "district") received a request for copies of each request for qualifications, request for proposals, contract, purchase order, and bid package for the years 2009 and 2010 for planning, zoning, and permitting services or specialists, including each response to request for qualifications number 01-09. You state you will release some of the responsive information. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Further, you state release of the submitted information may implicate the proprietary interests of several third parties.¹ Accordingly, you state, and provide documentation showing, you have 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 considered the exception you claim and reviewed the submitted information.

¹The interested third parties are Masterplan; The Ratliff Group, LLC; Baldwin Associates; Zone Systems, Inc.; and Bureau Veritas North America, Inc.

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 their submitted information should not be released. On behalf of the third parties, you argue the submitted information is excepted under section 552.110 of the Government Code. However, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your arguments under section 552.110. Because we have not received comments from any third party, 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 district may not withhold the submitted information on the basis of any proprietary interest the third parties may have in the information.

We note the submitted information includes information that is subject to sections 552.101 and 552.136 of the Government Code.² Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523(1989), 373 (1983). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

²The 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).

Section 552.136 of the Government Code 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 district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.³

In summary, the district must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the information we have marked under section 552.136 of the Government Code. As no additional exceptions to disclosure have been raised, the remaining information must be released.⁴

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

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

⁴We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

Ref: ID# 402506

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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