



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2010

Ms. Paula Nicholas  
Housing Authority  
City of Beaumont  
1890 Laurel Street  
Beaumont, Texas 77701

OR2010-18963

Dear Ms. Nicholas:

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# 403096.

The Beaumont Housing Authority (the "authority") received a request for proposals submitted in response to Request for Proposals #10-02. You take no position on the public availability of the submitted information. You believe, however, that the submitted information may implicate the proprietary interests of Realtex Housing Management, L.L.C., Orion Real Estate, Inc., and Alpha-Barnes Real Estate Services. You inform us that these third parties were notified 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.<sup>1</sup> We have reviewed the information you submitted.

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 that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, no interested third party has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes

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<sup>1</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

proprietary information of any of the interested third parties, and the authority may not withhold any portion of the submitted information on that basis. *See* 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, 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.

We note that the submitted information contains insurance policy numbers. Section 552.136 of the Government Code provides 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.”<sup>2</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined that an insurance policy number is an access device for the purposes of section 552.136. The authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.<sup>3</sup>

Next, we note some of the remaining information appears to 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 (1977). 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 authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released, but any copyrighted information 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.

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<sup>2</sup>This office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>3</sup>We note that 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, without the necessity of requesting an attorney general decision.

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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 403096

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Realtex Housing Management  
Building F, Suite 200  
1101 South Capital of Texas Highway  
Austin, Texas 78746  
(w/o enclosures)

Orion Real Estate  
1455 West Loop South, Suite 800  
Houston, Texas 77027  
(w/o enclosures)

Alpha-Barnes Real Estate  
12720 Hillcrest Road, Suite 400  
Dallas, Texas 75230  
(w/o enclosures)