



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2011

Ms. Barbara Smith Armstrong
General Counsel
The Harris County Purchasing Department
1001 Preston, Suite 670
Houston, Texas 77002

OR2011-11805

Dear Ms. Armstrong:

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# 427424.

The Harris County Purchasing Agent (the "county") received a request for information related to a Request for Proposals 09-0239.¹ Although you raise no exceptions to disclosure of the submitted information, you indicate release of this information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, the county has notified these third parties of their right to submit arguments to this office explaining why their information should not be released.² See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested

¹As you have not submitted a copy of the written request for information, we take our description from your brief.

²The interested third parties are: Syscon Justice Systems, Inc., Mentis Technology Solutions, L.L.C., Tyler Technologies, Inc., Unisys Corporation, and Deloitte Consulting, L.L.P.

information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we must address the county's obligations under the Act. Section 552.301 prescribes procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Section 552.301(e) requires a governmental body to provide a copy of the written request for information and a signed statement or sufficient evidence of the date the governmental body received the request to this office no later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e)(1)(B), (C). However, as of the date of this letter, you have not submitted to this office a copy of the written request for information. 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party interests can provide compelling reasons to withhold information, we will consider whether the submitted information is excepted from disclosure under the Act. We also note portions of the information are subject to section 552.136 of the Government Code, which provides a compelling reason to withhold information; thus, we will also address this exception for the submitted information.³

Section 552.136 of the Government Code provides, “[n]otwithstanding 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.” Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for the purposes of section 552.136. Accordingly, the county must withhold the insurance policy number we marked under section 552.136.

³The 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).

Next, we note 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the third parties have not submitted to this office any reasons explaining why their submitted information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes proprietary information of these companies, and the county may not withhold it based on the proprietary interests of these companies. *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, 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.

We note that portions of the remaining information are 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 county must withhold the insurance policy number we marked under section 552.136 of the Government Code. The remaining information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.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

⁴We note the information to be released includes social security numbers you have marked pursuant to section 552.147(b) of the Government Code. This section 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 under the Act. Gov't Code § 552.147(b).

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# 427424

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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