



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2012

Mr. J. Greg Hudson  
For Montgomery County Hospital District  
Hudson & O'Leary, L.L.P.  
1010 MoPac Circle, Suite 201  
Austin, Texas 78746

OR2012-01059

Dear Mr. Hudson:

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# 443025.

The Montgomery County Hospital District (the "district"), which you represent, received a request for all responses to a specified request for proposals ("RFP"). You raise section 552.110 of the Government Code but make no arguments and take no position regarding the applicability of this exception. Instead, you state that the request may involve third party proprietary interests. Accordingly, you provide documentation showing that you notified Institute of Technology, Inc. ("ITT"), New World Systems ("New World"), and TriTech Software Systems ("TriTech") of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 applicability of exception in certain circumstances). We have considered the submitted information.

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 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, this office has not received comments from ITT, New World, or TriTech explaining why their information should not be released to the

requestor. Thus, we have no basis to conclude that the release of any of the information at issue would implicate ITT's, New World's, or TriTech's interests. *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. Accordingly, we conclude that the district may not withhold any of the information on the basis of any interest ITT, New World, or TriTech may have in the information

Section 552.101 of the Government Code exempts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 also encompasses information other statutes make confidential, such as section 560.003 of the Government Code.<sup>1</sup> Section 560.003 provides "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). The submitted information contains a fingerprint. There is no indication the requestor has a right of access to the fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Therefore, the district must withhold the fingerprint, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The remaining documents include information that is subject to section 552.136 of the Government Code. 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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "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 . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* (defining "access device"). Accordingly, the district must withhold the routing, bank account, and insurance policy numbers we have marked under section 552.136 of the Government Code.

---

<sup>1</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 portions of the submitted 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). However, 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 district must withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and the routing, bank account, and insurance policy numbers we have marked under section 552.136 of the Government Code. The district must release the remaining information, 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.

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 443025

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Ewe-Leng Lim  
Institute of Information Technology, Inc.  
5910 FM 1488 Road  
Magnolia, Texas 77354  
(w/o enclosures)

Ms. Kathy Fant  
New World Systems  
888 West Big Beaver Road, Suite 600  
Troy, Michigan 48084-4749  
(w/o enclosures)

Mr. Christopher D. Maloney  
Tritech Software Systems  
9860 Mesa Rim Road  
San Diego, California 92121  
(w/o enclosures)