



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2012

Ms. Barbara Smith Armstrong
Assistant County Attorney
General Counsel to the Harris County Purchasing Agent
1001 Preston, Suite 670
Houston, Texas 77002

OR2012-03905

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# 447856.

The Harris County Purchasing Agent (the "county") received a request for three categories of information pertaining to RFP # 10/0368. Although you take no position as to whether the submitted information is excepted under the Act, you inform us release of this information may implicate the proprietary interests of CBIC Construction & Development, LLC ("CBIC"), Healthy Resources Enterprise, Inc. ("HRE"), and LMC Corporation ("LMC"). Accordingly, you notified these 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 Act in certain circumstances). Although we have not received comments from any third party, the county has forwarded us copies of letters CBIC, HRE, and LMC submitted to the county asserting that portions of their information be excepted from disclosure.¹ We have considered the submitted arguments and reviewed the submitted information.

¹We 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. Gov't Code § 552.305(d)(2)(B).

Although in their letters to the county, HRE and LMC object to the release of portions of their information, neither company raised any exceptions to disclosure, nor did they provide any arguments explaining how release of the information at issue would harm the companies. Therefore, the county may not withhold any portion of HRE or LMC's information on the basis of any proprietary interest that HRE or LMC may have in it. *See* Gov't Code § 552.305.

CBIC raises section 552.110 of the Government Code for portions of its information. Section 552.110(b) 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, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (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).

CBIC claims some of its submitted information, including its pricing information, is exempted from disclosure under section 552.110(b) of the Government Code. Upon review, we conclude CBIC has established the release of its pricing information, which we have marked, would cause the company substantial competitive injury; therefore the county must withhold the information we have marked under section 552.110(b). However, we find CBIC has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the remaining information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to Gov't Code § 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience). We, therefore, conclude the county may not withhold any of CBIC's remaining information under section 552.110(b) of the Government Code.

The submitted documents also include information that is subject to section 552.136 of the Government Code.² 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). 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 county must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

²The 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 that 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 (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 information we have marked under section 552.110 of the Government Code. The county must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright may be released only 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, 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 447856

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Esther Francis
CBIC Construction & Development, LLC
1113 Howard Avenue
Deer Park, Texas 77536
(w/o enclosures)

Mr. Eric Boutte
CEO & President
Healthy Resources Enterprise, Inc.
530 North Sam Houston Parkway East, Suite 300
Houston, Texas 77060
(w/o enclosures)

Mr. Ed Wauters
Director of Operations
LMC Corporation
9191 Winkler Drive
Houston, Texas 77017
(w/o enclosures)