



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2012

Mr. Benjamin V. Lugg
Counsel for The San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2012-10036

Dear Mr. Lugg:

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# 459640.

The San Antonio Housing Authority ("SAHA") received a request for the winning bid concerning a specified request for proposals. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. You also believe the requested information may implicate the proprietary interests of SADA Systems, Inc. ("SADA"). You inform us SADA was notified of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exceptions you claim and reviewed the information you submitted.

We first note 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 the party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from SADA. Thus, as SADA has not demonstrated any of the information at issue is proprietary for purposes of the Act, SAHA may not withhold any of the submitted

¹See 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).

information on the basis of any interest SADA may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address SAHA's claims under sections 552.101 and 552.137 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found.*, 540 S.W.2d 668 at 685. To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has determined common-law privacy encompasses certain types of personal financial information. Financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).* We have marked personal financial information SAHA must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). We note this exception is not applicable to an e-mail address "contained in a response to a request for bids or proposals[.]" *Id.* § 552.137(c)(3). Thus, as the submitted information is contained in a response to a request for proposals, SAHA may not withhold any of the e-mail addresses contained in the information under section 552.137 of the Government Code.

We note some of the submitted information falls within the scope of section 552.136 of the Government Code.² Section 552.136(b) provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

²This office will raise section 552.136 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).*

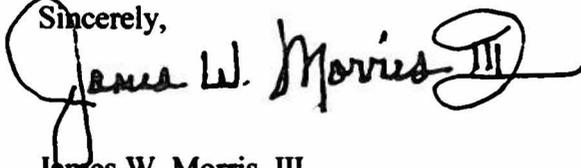
assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Therefore, SAHA must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Lastly, we note some of the submitted information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials 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, SAHA must withhold (1) the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the insurance policy numbers we have marked under section 552.136 of the Government Code. The rest of the submitted information must be released, but any information protected by copyright 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, 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 459640

Enc: Submitted documents

**c: Requestor
(w/o enclosures)**

**Ms. Elda Peters
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