



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2013

Mr. Craig Purifoy
Open Records Coordinator
Texas Department of Family and Protective Services
Mail Code Y937
P.O. Box 149030
Austin, Texas 78714-9030

OR2013-08116

Dear Mr. Purifoy:

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# 487525 (DFPS ORR ID# 02212013WYV, 03152013SBE).

The Texas Department of Family and Protective Services (the "department") received two requests for information relating to initiation for bid 530-13-0062.¹ You state you will release some of the requested information. You state the department will redact social security numbers pursuant to section 552.147 of the Government Code.² Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you notified 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 the Act in certain circumstances). We have received comments from The Bair Foundation of Texas ("Bair"). You have also

¹As you have not submitted the first request for information, we take our description for that request from your brief.

²We note section 552.147(b) of the Government Code 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. *See Gov't Code § 552.147(b).*

provided us with comments from Accommodating Healthcare Services, L.L.C. (“AHS”). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the department’s obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov’t Code § 552.301(e). As of the date of this letter, you have not submitted to this office a copy of the first written request for information. Accordingly, we conclude the department failed to comply with the requirements of section 552.301 with regard to this request.

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 the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *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). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. In this instance, third party interests are at stake and, thus, we will consider whether the submitted information must be withheld under the Act based on third party interests. Further, we note portions of the submitted information are subject to sections 552.130 and 552.136. Sections 552.130 and 552.136 can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of sections 552.130 and 552.136 to the submitted information.

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Bracane Company (“Bracane”), Child and Family Guidance Center (“CFGC”), Dispute Mediation Service (“DMS”), Eckerd Youth Alternatives, Inc. (“Eckerd”), or Mauney & Associates, L.L.C. (“Mauney”) explaining why the submitted information should not be released. Therefore, we have no basis to conclude Bracane, CFGC, DMS, Eckerd, or Mauney have a protected proprietary interest in the submitted information. *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, the department may not withhold the submitted information on the basis of any proprietary interest Bracane, CFGC, DMS, Eckerd, and Mauney may have in the information.

AHS seeks to withhold portions of its information. However, AHS has not pointed us to any statutory confidentiality provision, nor are we aware of any, that would make any of its information confidential under the Act. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality); *see also* Gov't Code § 552.110. Accordingly, the department may not withhold any portion of the submitted information based on the comments submitted by AHS.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code 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.* Upon review, the department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. However, Bair has failed to demonstrate the remaining information it seeks to withhold consists of access device numbers subject to section 552.136. Thus, no portion of the remaining information may be withheld under section 552.136 of the Government Code.

We understand AHS to raise section 552.137 of the Government Code for portions its information. Section 552.137 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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note

section 552.137 does not apply to an e-mail address “contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a government body in the course of negotiating the terms of a contract or potential contract[.]” *See id.* § 552.137(c)(3). The e-mail addresses contained in the remaining information are subject to section 552.137(c)(3). Thus, no portion of the remaining information may be withheld under section 552.137 of the Government Code.

We note a portion 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 department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining information must be released; however, any information subject to 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 487525

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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