



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2013

Mr. Charles Galindo Jr.
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2013-09576

Dear Mr. Galindo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 489783 (PIR Nos. 13-35703 and 13-36113).

The Office of the Attorney General (the "OAG") received requests for the contract and responses to request for proposal number 270786 and documents related "to other services connected to child support disbursement processing, such as lockbox payment processing contracts." The OAG released some information, asserts section 552.139 of the Government Code to withhold a portion of the information, and takes no position as to disclosure of the remaining information.¹ Because release of some of the information may implicate the proprietary interests of Bank of America; JP Morgan Chase Bank; Official Payments Holdings, Inc.; and Xerox State and Local Solutions, Inc., the OAG notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. Gov't Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released).

¹The OAG states it will redact insurance policy numbers as access device numbers pursuant to section 552.136 of the Government Code. See Gov't Code § 552.136(c)-(e) (procedures permitting governmental body to redact access device numbers without necessity of requesting decision from this office).

First, the OAG acknowledged it failed to comply with section 552.301(e) by untimely submitting a portion of the requested information. *Id.* § 552.301(e)(1)(D) (within fifteen business days of receiving request for information, governmental body must submit to this office specific information requested). A governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. *Id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.*; *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 to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). The OAG asserts section 552.139 of the Government Code, which is a compelling reason sufficient to overcome the presumption of openness. Thus, we will consider the applicability of section 552.139 to the untimely submitted information.

Section 552.139(a) of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). The OAG asserts the untimely submitted information relates to computer network security and therefore is excepted from public disclosure under section 552.139(a). Upon review of the information, we agree the OAG must withhold the information under section 552.139(a) of the Government Code because it relates to computer network security.

Next, 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. *Id.* § 552.305(d)(2)(B). As of the date of this letter, the third parties have not submitted arguments to this office explaining why their information should not be released. We thus have no basis to conclude release of the information will harm the third parties' proprietary 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 (1990). Accordingly, the OAG may not withhold the information based on any proprietary interests the third parties may have.

Lastly, we note some of the materials are copyrighted. 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 OAG must withhold a portion of the information pursuant to section 552.139(a) and release the remainder. In releasing copyrighted materials, the OAG must comply with the 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 489783

Enc: Submitted documents

c: 2 Requestors
(w/o enclosures)

Ms. Kathaleen Ford Smith
Bank of America
515 Congress Avenue, Suite 1100
Austin, Texas 78701
(w/o enclosures)

Official Payments Holdings, Inc.
3550 Engineering Drive, Suite 400
Norcross, Georgia 30092
(w/o enclosures)

Ms. Brenda Pollard
JP Morgan Chase Bank
221 West 6th Street, Floor 2
Austin, Texas 78701
(w/o enclosures)

Ms. Jodi Bullard
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