



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2013

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2013-10609

Dear Ms. Hojem:

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# 491215 (MTA No. 2013-0154).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for information pertaining to four specified requests for proposals. You state METRO has released some of the requested information to the requestor. Although you take no position on the public availability of the remaining requested information, you state the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified RZV Ltd d/b/a Texas Landscape Co., Maldonado Nursery & Landscaping, TRC Engineering, Inc., Johnson Controls, Inc., and Accessories Plus, Inc. of the request and of their right to submit arguments to this office explaining 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); *see also* 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 reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, we have not received arguments from any of the third parties. Thus, none of the third parties have demonstrated they have a protected proprietary interest in any of the submitted

information. *See id.* § 552.110(a)-(b); 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, METRO may not withhold the submitted information on the basis of any proprietary interests the third parties may have in the information.

We note some of the submitted information is subject to sections 552.130 and 552.136 of the Government Code.¹ Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of Texas or another state or country is exempted from public release. Gov't Code § 552.130(a)(2). We conclude METRO must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, “[n]otwithstanding any other provision of this chapter, 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); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Accordingly, METRO must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the materials at issue 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, METRO must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. METRO must release the remaining information; however, 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.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 491215

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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