



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2014

Mr. Joshua Haley
Staff Attorney
Texas Municipal League Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78714-9194

OR2014-01243

Dear Mr. Haley:

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# 513147.

The Texas Municipal League Intergovernmental Risk Pool ("TML") received a request for responses provided by Guy Carpenter & Company, LLC ("Carpenter") and Towers Watson ("Towers") to a particular request for proposals. TML claims some of the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code.¹ You state and provide documentation showing you notified Carpenter and Towers of TML's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records

¹Although you also assert the requested information is excepted from disclosure under section 552.305 of the Government Code, we note this section is not an exception to public disclosure under the Act. Rather, it addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. *See* Gov't Code § 552.305.

Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). You assert some of the submitted information is excepted from disclosure under section 552.104(a) because the information could give a competitor an advantage and could cause substantial competitive harm to Carpenter and Towers. However, upon review, we conclude TML has failed to establish the applicability of section 552.104(a) to the information at issue. Thus, TML may not withhold any of the submitted information on that ground.

TML also asserts some of the submitted information is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address TML's arguments under section 552.110.

The submitted information contains insurance policy numbers. Section 552.136(b) of the Government Code provides that "[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."² Gov't Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, TML must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Finally, 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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the interested third parties has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding any portion of the remaining information constitutes proprietary information of these third parties, and TML may not withhold any portion of it on that basis. *See* 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, 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.

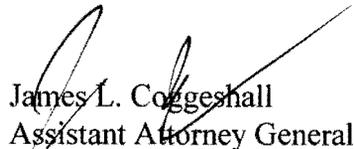
²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

To conclude, TML must withhold the information we have marked under section 552.136 of the Government Code. TML must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 513147

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

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