



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2014-18004

Dear Ms. Winn:

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# 538677.

The Travis County Purchasing Office (the "county") received a request for three categories of information pertaining to "the provision of food service(s) to inmates, visitors, and/or officers and commissary service(s) at any adult and/or juvenile jail and/or detention facilities in Travis County." Although you take no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of Aramark Correctional Services, Keefe Group, and Trinity Services Group, Incorporated. Accordingly, you state, and provide documentation showing, you notified these third parties of the request 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) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under 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 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* Gov't Code

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the county may not withhold the submitted information on the basis of any proprietary interests the third parties may have in the information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find some of the submitted information reveals personal financial information. We are unable to determine whether this information pertains to actual living individuals or fictitious individuals created as samples for purposes of responding to the request for proposals. Therefore, to the extent the information we have indicated pertains to actual living individuals, the county must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have indicated does not pertain to actual living individuals, it is not private, and the county may not withhold it under section 552.101 on that basis.

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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined

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).

insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, we find the county must withhold the insurance policy numbers contained in the submitted information under section 552.136 of the Government Code.

We note some 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, to the extent the information we have indicated pertains to actual living individuals, the county must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold the insurance policy numbers contained in the submitted information under section 552.136 of the Government Code. The county must release the remaining information; however, the county may only release the information subject to copyright 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.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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 538677

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Ron Proud
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Oldsmar, Florida 34677
(w/o enclosures)

Mr. Eddie Noreiga
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Commissary Service
2300 Warrenville Road
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