



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2006

Mr. James Nolan
Open Records Attorney
Texas Comptroller of Public Accounts
PO Box 13528
Austin, TX 78711-3528

OR2006-11002

Dear Mr. Nolan:

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# 259845.

The Texas Comptroller of Public Accounts (the "comptroller") received three requests for all proposals submitted by banks for RFP #175h. You state that some of the requested information has been released to the requestors. You claim that portions of the submitted information are excepted from public disclosure under sections 552.136 and 552.139 of the Government Code. You also indicate that the submitted information may be subject to third party proprietary interests. Pursuant to section 552.305 of the Government Code, you have notified Wells Fargo Bank ("Wells Fargo"), Citigroup, Inc. ("Citigroup"), Wachovia Bank National Association ("Wachovia"), Bank of America, and First Horizon of the requests and of each company's right to submit arguments to this office as to why the information should not be released. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have reviewed your arguments and the submitted information.

Initially, we note that 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 that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has

not received comments from Wells Fargo, Citigroup, Wachovia, Bank of America, or First Horizon explaining how the release of the submitted information will affect their proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate their proprietary interests. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, we conclude that the comptroller may not withhold any of the submitted information based on the proprietary interests of Wells Fargo, Citigroup, Wachovia, Bank of America, or First Horizon.

You claim that portions of the submitted information, which you have marked, are subject to section 552.136, which provides:

(a) In this section, "access device" means 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:

(1) obtain money, goods, services, or another thing of value;
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Gov't Code § 552.136. Upon review, we agree that you must withhold the bank routing number you have marked under section 552.136 of the Government Code. However, the comptroller has not demonstrated that the user ID and password you have marked are access device numbers for the purposes of section 552.136 of the Government Code. Accordingly, the comptroller may not withhold the user ID and password under section 552.136 of the Government Code.

You claim that a portion of the submitted information, which you have marked, is exempt from public disclosure under section 552.139(a) of the Government Code. Section 552.139(a) provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Upon review, however, we find that you have not provided any arguments demonstrating that the information you have marked relates to computer network security or to the design, operation, or defense of a computer network. *See id.* § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Accordingly, you may not withhold any of the marked information under section 552.139 of the Government Code. *Id.*

We note, however, that some of the materials at issue are 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 protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, 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. *See* Open Records Decision No. 550 (1990).

In summary, the comptroller must withhold the bank routing number you have marked under section 552.136 of the Government Code. As the comptroller does not raise any other exceptions against disclosure, the remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

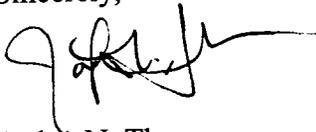
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ir

Ref: ID#259845

Enc. Submitted documents

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