



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2007

Mr. Paul J. Stewart
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2007-02047

Dear Mr. Stewart:

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# 271713.

The Fort Bend County Purchasing Department (the "department") received a request for proposals in response to Request for Proposal RFP 06-069. You claim that a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also state that the submitted information may contain proprietary information, and thus, pursuant to section 552.305 of the Government Code, you have notified Security Financial Resources, Inc. ("Security"), Metlife Resources ("MetLife"), Public Agency Retirement Services ("Public"), Nationwide Retirement Solutions ("Nationwide"), and the Edward Jones Company ("Jones") of the request 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 the Act in certain circumstances). We have considered all of the submitted arguments and reviewed 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 Security, MetLife, Public, Nationwide, or Edward 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 the proprietary interests of Security, MetLife, Public, Nationwide, or Edward. *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). Thus, none of the submitted information may be withheld based on any proprietary interest of Security, MetLife, Public, Nationwide, or Jones.

You claim that Exhibit F contains information that is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information that is made confidential by statute. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the department must withhold the marked form in Exhibit F pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

You claim that portions of the submitted information are excepted from public disclosure under section 552.136 of the Government Code, 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 the department must withhold the insurance policy numbers and the bank account number we have marked under section 552.136 of the Government Code.

Finally, we note that some of the materials at issue appear to 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 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 department must withhold the marked form in Exhibit F under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the *United States Code*. The department must withhold the insurance policy numbers and bank account number we have marked under section 552.136 of the Government Code. The department must release the remaining information, 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).

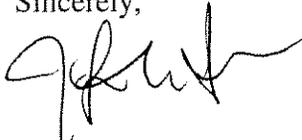
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jacklyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 271713

Enc. Submitted documents

c: Ms. Wendy Young Carter
Vice President, Government
Markets
CitiStreet
11951 Freedom Drive, 13th Floor
Reston, Virginia 20190
(w/o enclosures)

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Metlife Resources
400 Atrium Drive
Somerset, New Jersey 08875
(w/o enclosures)

Mr. Stephen M. Angelis
Nationwide Retirement Solutions
5900 Parkwood Place
Dublin, Ohio 43016
(w/o enclosures)

Mr. Kevin M. Watt
Security Financial Resources, Inc. and
Dearborn & Greggs
One Security Benefit Place
Topeka, Kansas 66636-0001
(w/o enclosures)

Mr. Tod Hammeras
Public Agency Retirement Services
4201 Bee Caves Road, Suite C-108
Austin, Texas 78746
(w/o enclosures)

Mr. Ronald Voyles
Edward Jones with the Hartford
Financial Service Group
3310 First Street
Rosenberg, Texas 77471
(w/o enclosures)