



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 10, 2007

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren Suite 108
Irving, Texas 75062-2763

OR2007-08671

Dear Mr. Boyle:

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# 285131.

The Farmers Branch Police Department (the "department"), which you represent, received a request for the responses to a request for proposals for an electronic ticketing solution. You believe that this request for information implicates the interests of Brazos Technology Corporation ("Brazos"), Cardinal Tracking, Inc. ("Cardinal"), and Infokall, Inc. under sections 552.101 and 552.110 of the Government Code. You have submitted arguments under section 552.110. You also state that you notified Brazos, Cardinal, and Infokall of this request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code 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 decision, this office has received no correspondence from Brazos, Cardinal, or Infokall. Thus, none of the third parties has demonstrated that any of the submitted information is confidential or proprietary for the purposes of the Act. *See Gov't Code §§ 552.101, .110(a)-(b)*; Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address the exceptions you raise. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional,

¹*See Gov't Code § 552.305(d)*; Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). You have not directed our attention to any law under which any of the submitted information is considered to be confidential for the purposes of section 552.101. We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code.

You also raise section 552.110(b) of the Government Code, which excepts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. You contend that release of the submitted information “would be very damaging to the [p]roposers and would harm their position in the competitive marketplace.” Having considered your argument, we conclude that you have not made the specific factual or evidentiary showing required by section 552.110(b) that the release of the submitted information would cause any of the interested parties any substantial competitive harm. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). We therefore conclude that the department may not withhold any of the submitted information under section 552.110 of the Government Code.

We note, however, that section 552.136 of the Government Code is applicable to some of the submitted information.² Section 552.136(b) states that “[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”). We have marked insurance policy numbers that the department must withhold under section 552.136.

We also note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary, the department must withhold the information that we have marked under section 552.136 of the Government Code. The rest of the submitted information must be released. Any information that is protected by copyright must 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).

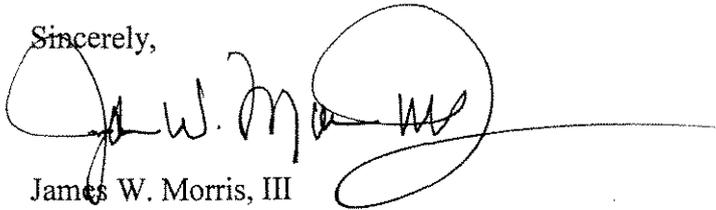
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "James W. Morris, III", is written over a horizontal line. The signature is stylized and includes a large circular flourish on the left side.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 285131

Enc: Submitted documents

c: Ms. Pamela MacDougall
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