



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2007

Mr. James G. Nolan
Open Records Attorney
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2007-14676

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# 294560.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for all responses submitted to the comptroller for RFP# 304-7-0634JS, excluding one specified proposal, and any letters from bidders withdrawing their proposals. You state that you have released a portion of the of the requested information. You claim that a portion of the submitted information is excepted from disclosure under section 552.136 of the Government Code. You also state that releasing the submitted information may implicate the interests of third parties. Accordingly, you have notified Information Builders, Inc. ("IBI"), CBH, and IBM of the request and of their opportunity to submit arguments to this office. *See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances).* We have considered the claimed exception and 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, none of the third parties you notified have submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the notified third parties' proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 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). Accordingly, we conclude

that the comptroller may not withhold any portion of the submitted information based on the proprietary interests of IBI, CBH, or IBM.

You claim that a portion of the of submitted information is subject to section 552.136. Section 552.136 of the Government Code states 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.” Gov’t Code § 552.136. Upon review, we find that the comptroller must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

We note that a portion of the submitted information is 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 account and routing numbers we have marked under section 552.136. 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

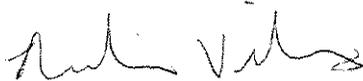
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 294560

Enc. Submitted documents

c: Mr. Chad Childress
Information Builders, Inc.
1311 Harriet Court
Austin, Texas 78756
(w/o enclosures)

Mr. Adrienne O'Keefe
Bates Investigations, Inc.
4131 Spicewood Springs Road, # J2
Austin, Texas 78759
(w/o enclosures)

Mr. Aaron Weissberger
CBH
1 Technology Drive, Suite 1-821
Irvine, California 92618
(w/o enclosures)

Ms. Mila Rios
IBM
400 West 15th Street
Austin, Texas 78701-9960
(w/o enclosures)