



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2009

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2009-09671

Dear Ms. Clarke:

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# 349043.

Lubbock County (the "county") received a request for all bid proposals submitted in response to RFP # 90102 for delinquent fees collection services, excluding the proposal submitted by the requestor's firm. Although you take no position regarding the public availability of the requested information, you state it may implicate the rights of the third parties whose proposals have been requested. You state, and provide documentation showing, that you have notified FMA Alliance, Ltd. ("FMA"); Linebarger Goggan Blair & Sampson, L.L.P.; Municipal Services Bureau; McCreary, Veselka, Bragg & Allen, P.C.; Penn Credit Corporation; and National Recovery Agency Group of their right to submit arguments to this office as to why their submitted proposals should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received correspondence from FMA. We have considered 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) of the Government

Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from Linebarger Goggan Blair & Sampson; Municipal Services Bureau; McCreary, Veselka, Bragg & Allen; Penn Credit Corporation; and National Recovery Agency Group explaining why their information should not be released. Thus, we have no basis for concluding that any portion of the submitted information pertaining to these third parties constitutes proprietary information, and the county may not withhold any portion of their information on that basis. *See* 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, 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), 542 at 3 (1990).

FMA seeks to withhold certain customer information under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial 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). This exception to disclosure 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. *See id.* § 552.110(b); *see also* ORD 661 at 5-6. Upon review, we find that FMA has established that release of the information it seeks to withhold would cause the company substantial competitive harm. Therefore, we conclude that the county must withhold the information we have marked under section 552.110(b) of the Government Code.¹

We note that a portion of the submitted information, which we have marked, is subject to section 552.101 of the Government Code.² Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See 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 demonstrated. *See id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from

¹In light of our conclusion under section 552.110(b), we need not address FMA's claim under section 552.104.

²The Office of the Attorney General will raise mandatory exceptions like section 552.101 and 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

required public disclosure under common-law privacy. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history); 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373(1983) (common-law privacy protects assets and income source information). The information we have marked constitutes personal financial information that is not of legitimate public concern. Thus, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The submitted information also contains an insurance policy number and bond identification numbers subject to section 552.136 of the Government Code. Section 552.136 of the Government Code provides 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(b); *see also* § 552.136(a) (definition of “access device number” includes account numbers). The county must withhold the information we have marked pursuant to section 552.136 of the Government Code.

We note that a portion of the submitted 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. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990).

In summary, the county must withhold the information we have marked under section 552.110(b) of the Government Code. The county must withhold the information we have marked under section 552.101 of the Government Code. The county must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released; however, in releasing the information that is copyrighted, the county must comply with applicable 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.oag.state.tx.us/open/index_orl.php,

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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 349043

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Bruce Cummings
President
MSB
6505 Airport Boulevard, Suite 100
Austin, Texas 78752
(w/o enclosures)

Mr. Richard S. Templin
President
Penn Credit Corp.
P.O. Box 988
Harrisburg, Pennsylvania 17108
(w/o enclosures)

Ms. Loraine E. Lyons
Vice President & General Counsel
FMA Alliance
11811 North Freeway, Suite 900
Houston, Texas 77060
(w/o enclosures)

Mr. Harvey Allen
McCreary Veselka Bragg & Allen, P.C.
P.O. Box 1310
Round Rock, Texas 78680
(w/o enclosures)

Mr. Steven Kusic
CEO
NRA Group
2491 Paxton Street
Harrisburg, Pennsylvania 17111
(w/o enclosures)

Mr. Kevin Chester
Linebarger Goggan Blair & Sampson
2700 Via Fortuna Drive, Suite 400
Austin, Texas 78746
(w/o enclosures)