



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2009

Mr. Augustin Rivera, Jr.  
Dunn, Weathered, Coffey, Rivera & Kasperitis, P.C.  
611 South Upper Broadway  
Corpus Christi, Texas 78401

OR2009-15392

Dear Mr. Rivera:

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# 360111.

The Del Mar College District (the "district"), which you represent, received a request for three categories of information pertaining to a specified renovation project. Although you take no position with respect to the public availability of the submitted information, you indicate you have notified David Van Fleet, Inc. d/b/a Van Fleet Construction ("Van Fleet") of the request and of its right to submit arguments to this office as to why the submitted 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 the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note it does not appear you have submitted the requested "Application and Certificate for Payment," "Contractor's Affidavit of Payments," or correspondence between the district and Van Fleet. To the extent information responsive to these portions of the request existed on the date the district received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

An interested third party is allowed ten business days after the date of its receipt of a 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Van Fleet has not submitted comments to this office explaining why any portion of the submitted

information relating to it 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 Van Fleet's interests, and none of the information may be withheld on that basis. *See id.* § 552.110; 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).

We note portions of the submitted information are subject to section 552.136 of the Government Code.<sup>1</sup> Section 552.136 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(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. As no exception to disclosure has been raised for the remaining information, it must be released.

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](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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 360111

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. David Van Fleet  
David Van Fleet, Inc.  
d/b/a Van Fleet Construction  
312 East Kleberg Avenue  
Kingsville, Texas 78363  
(w/o enclosures)