



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2010

Ms. Michelle A. Keim
Budget and Program Coordinator
Tarrant County Community Supervision and Corrections Department
200 West Belknap
Fort Worth, Texas 76196-0255

OR2010-01994

Dear Ms. Keim:

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# 370097.

The Tarrant County Community Supervision and Corrections Department (the "department") received two requests for the proposals, accompanying evaluations, and the executed contract pertaining to RFP No. 2009-104 for Offender Paid Electronic Monitoring.¹ One of the requestors also seeks documentation regarding the recommendation to the Commissioners Court, documentation from vendor presentations and demonstrations, any communications between the vendors and the department, and any inter-agency communications pertaining to the same RFP. You indicate the department has released the "Commissioners Court Communication - Award of RFP 2009-014." You claim that a portion of the submitted information is excepted from disclosure under section 552.117 of the Government Code. You also inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the department has notified the interested third parties of the request and of their right to submit arguments to this office explaining why their information should not be released.² *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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

¹You inform us that the second request for information was sent by e-mail to Tarrant County's Purchasing Office on November 23, 2009, and you indicate that this request was not received by the department's officer of public information or his designee until November 30, 2009. *See* Gov't Code § 552.301(c) (procedural deadlines under section 552.301 for requests sent by electronic mail triggered when officer for public information receives request).

²The notified third parties are: BI Incorporated; G4S Justice Services, Inc.; Providence State Corporation of Texas; Recovery Healthcare Corporation; and Sentinel Offender Services, L.L.C.

explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the department has not submitted the requested contract for our review. To the extent the contract existed on the date the department received this request, we assume that the department has released it to the requestor. If the department has not released any such information, the department must release it 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).

Next, we note that, pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You inform us that the department received the second request for information on November 30, 2009; however, you did not raise section 552.117 until January 11, 2009. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find you have failed to comply with the requirements of section 552.301 in raising section 552.117.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason generally exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.117 of the Government Code can provide a compelling reason that overcomes the presumption of openness; therefore, we will consider your argument under this section.

We next note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice 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 letter, we have not received any correspondence from any of the notified third parties. Thus, none of these third parties has demonstrated that it has a protected proprietary interest in any of the information at issue. *See id.* § 552.110(a)-(b); 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). Therefore, the department may not withhold any of the submitted information on the basis of any proprietary interest these third parties may have in it.

You claim that some of the information responsive to the second request is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.³ Gov't Code § 552.117(a)(1). Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The department may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The submitted information does not reflect whether the employees elected to keep their information confidential pursuant to section 552.024 of the Government Code prior to the department receiving the second request. If the employees made timely elections under section 552.024, the department must withhold the information we have marked under section 552.117(a)(1). If the employees did not make timely elections under section 552.024, the information that we have marked under section 552.117(a)(1) may not be withheld under that exception.

Next, we note some of the remaining information is subject to section 552.136 of the Government Code, which 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.”⁴ Gov't Code § 552.136(b). The department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.⁵

Finally, we note that some of the submitted information appears 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

³We note that section 552.024(c)(2) of the Government Code now allows a governmental body to redact certain personal information pertaining to employees who properly elected to keep their information confidential without the necessity of requesting a ruling from this office. *See* Gov't Code § 552.024(c)(2).

⁴The Office of the Attorney General will raise a mandatory exception like section 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).

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

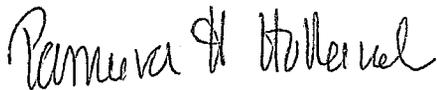
JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the 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 may only withhold the information we have marked under section 552.117 of the Government Code if the employees made timely elections under section 552.024 of the Government Code. The department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestors, but any copyrighted information may only be released in accordance with 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, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 370097

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)