



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 3, 2010

Mr. David M. Swope  
Assistant County Attorney  
Harris County Attorney  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2010-03039

Dear Mr. Swope:

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# 372123 (C.A. File No. 09GEN2452).

The Harris County Purchasing Agent (the "county") received a request for the scoring and winning proposal for a specified job number. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also state that release of this information may implicate the proprietary interests of a third party, TransCore, LP ("TransCore"). Accordingly, you have notified TransCore of this request for information 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requested scoring information for our review. To the extent the scoring information existed on the date the county received this request, we assume you have released it to the requestor. If you have not released any such information, you 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 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, TransCore has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Therefore, we have no basis to conclude that TransCore has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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. Although the county also raises section 552.110 of the Government Code for TransCore's information, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the county's argument under section 552.110 for the submitted information. Accordingly, the county may not withhold any portion of the submitted information on the basis of any proprietary interests that TransCore may have in this information.

We note the submitted information contains insurance policy numbers.<sup>1</sup> Section 552.136(b) of the Government Code 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). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the county must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.<sup>2</sup>

Finally, although the county raises section 552.101 in conjunction with copyright law, we note that copyright law does not make information confidential under this section. *See* Open Records Decision No. 660 at 5 (1999). However, although a governmental body must allow inspection of copyrighted materials unless an exception applies to the information, a custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). Thus, 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

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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).

<sup>2</sup>We 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.

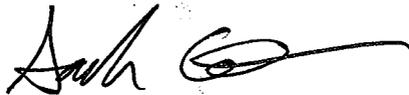
assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the county must withhold the information we have marked under section 552.136 of the Government Code. The county must release the remainder of the submitted information to the requestor 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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 372123

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Tracy S. Marks, P.E.  
Transcore, LP  
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(w/o enclosures)