



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2010

Ms. Blakely Fernandez  
Tuggey, Rosenthal, Pauerstein, Sandoloski, Agather, L.L.P.  
Attorney for Hidalgo County Regional Mobility Authority  
755 East Mulberry, Suite 200  
San Antonio, Texas 78212

OR2010-09384

Dear Ms. Fernandez:

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# 384361.

The Hidalgo County Regional Mobility Authority (the "authority"), which you represent, received a request for (1) the "entire packet" submitted at a specified Board of Directors meeting, (2) conflict of interest forms of all firms that submitted for the GMP review, and (3) all invoices paid to Hidalgo County Road builders, including backup materials. You state you have released some of the requested information. Although you take no position on whether the submitted information is excepted from disclosure,<sup>1</sup> you state release of this information may implicate the proprietary interests of third parties. Accordingly, you have notified S&B Infrastructure, Ltd. ("S&B"); L&G Engineering; and Leonel Garza Jr. & Associates, LLC of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 received comments from S&B. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>We understand you to raise section 552.305 of the Government Code as an exception to disclosure. However, we note section 552.305 is not an exception to disclosure. *See* Gov't Code § 552.305. Section 552.305 addresses the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See id.* Furthermore, although you also raise section 552.104, because you have provided no arguments explaining how this exception is applicable to the submitted information, we assume you no longer assert section 552.104. *See id.* §§ 552.301, .302.

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) 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 only received comments from S&B. Thus, we have no basis for concluding any portion of the submitted information constitutes the proprietary information of the remaining third parties whose information is at issue. *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. Accordingly, the authority may not withhold the submitted information based on the proprietary interests of the remaining third parties.

S&B raises section 552.110(b) of the Government Code for Attachment C of its proposal. 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. *Id.*; *see also* Open Records Decision No. 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). After reviewing the submitted information and the arguments, we determine S&B has established release of its pricing information would cause it substantial competitive harm. Therefore, the authority must withhold S&B's Attachment C under section 552.110(b). Because S&B does not object to the release of the rest of its proposal, the authority must release this information.

We note the submitted information includes insurance policy numbers. 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.”<sup>2</sup> Gov't Code § 552.136. This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.<sup>3</sup>

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

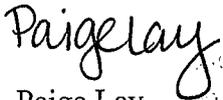
<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the authority must withhold S&B's Attachment C and the insurance policy numbers we marked under sections 552.110 and 552.136 of the Government Code, respectively. The remaining information 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 384361

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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