



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 11, 2011

Ms. Leticia McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2011-06492

Dear Ms. McGowan:

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# 417057.

The Dallas Independent School District (the "district") received a request for information related to request for proposal number JP203666. The district states it will release some responsive information. Although the district takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of four third parties. Accordingly, you have notified the third parties of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ 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 reviewed the submitted information.

Initially, we note it appears you have redacted some information pertaining to insurance coverage from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this

¹The third parties that received notice pursuant to section 552.305 are the following: USI Southwest; Upshaw Insurance Agency, Inc.; Key & Piskuran Insurance Agency; and McGriff, Seibels & Williams of Texas, Inc.

office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the district has been authorized to withhold the information at issue without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the district must not redact information from the information it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

We next note 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 be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, none of the third parties has submitted to this office reasons explaining why its information should not be released. Therefore, the third parties have provided us with no basis to conclude that they have protected proprietary interests in any of the submitted information. *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). Therefore, the district may not withhold any portion of the submitted information on the basis of any proprietary interest that these companies may have in the information.

We also note some of the submitted information is subject to common-law privacy.² Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *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 satisfied. *Id.* at 681-82.

This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. *See*

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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).

Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983). The submitted information contains business ownership percentages. This personal financial information is intimate or embarrassing and of no legitimate public interest. Accordingly, the district must withhold this personal financial information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Next, we note the remaining information contains insurance policy numbers. 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 district must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.³

Some of the remaining 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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.

In summary, the district must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy, and (2) section 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright must 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

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

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 417057

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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