



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011.

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2011-09178

Dear Ms. Kaiser:

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# 421995 (TWC Tracking No. 110323-045).

The Texas Workforce Commission (the "commission") received a request for the proposals received in response to Request for Offers # 2004-000Z.¹ You state the commission will release some information to the requestor. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009) and section 552.147 of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also believe the submitted information may implicate the interests of third parties, which you have not identified.³ You

¹We note the commission received clarification from the requestor regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also *City of Dallas v. Abbott*, 304 S.W.3 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

³We understand the third parties are New Avenue Systems, Inc., Granicus, Inc., TLC Holding Group, Inc., IB Productions, Inc., and You-niversity.com, Inc.

inform us these third parties were notified of this request for information and of their rights to submit arguments to this office as to why their requested information should not be released. See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Initially, we note that 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, this office has not received comments from any of the interested third parties explaining why their submitted information should not be released. Therefore, we have no basis to conclude that any of the interested third parties have 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. Accordingly, the commission may not withhold any portion of the submitted information based upon the proprietary interests of the third parties.

Section 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. Section 552.101 of the Government Code encompasses information protected by other statutes. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. See Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754

⁴We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

(M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Consequently, the commission must withhold the return information we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.136 of the Government Code provides, “[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). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). You claim the Employer Identification Numbers (“EIN”) and the Texas Building and Procurement Commission Vendor Number (“vendor number”) in the submitted information are access device numbers. We note, however, that an EIN is not an “access device number” for the purposes of section 552.136. The EIN is merely an employer tax identification number. Therefore, you may not withhold the EIN you have marked under section 552.136 of the Government Code. Further, you have failed to explain how the vendor number in the submitted information constitutes an access device number for purposes of section 552.136. Consequently, the commission may not withhold the EINs or the vendor number under section 552.136.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137(c)(3) states an e-mail address “contained in a response to a request for bids or proposals . . . [or] similar invitations soliciting offers or information relating to a potential contract” is not excepted from public disclosure. *See id.* § 552.137(c)(3). You indicate the commission intends to redact certain e-mail addresses in the submitted information pursuant to Open Records Decision No. 684. However, the e-mail addresses you have marked for redaction are all subject to section 552.137(c)(3) of the Government Code. Consequently, these e-mail addresses are not excepted under section 552.137 and may not be redacted pursuant to Open Records Decision No. 684.

In summary, the commission must withhold the return information we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The commission must release the remaining information to the requestor.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

Ref: ID# 421995

Enc. Submitted documents

c: Requestor
(w/o enclosures)

New Avenue Systems, Inc.
150 North Santa Anita, Suite 888
Arcadia, California 91006
(w/o enclosures)

Granicus, Inc
589 Howard Street, Suite 500
San Francisco, California 94105
(w/o enclosures)

TLC Holding Group, Inc.
c/o Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001
(w/o enclosures)

IB Productions, Inc.
c/o Ms. Margo M. Kaiser
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