



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Ms. Lisa Calem-Lindstrom
Public Information Coordinator
Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2012-05109

Dear Ms. Calem-Lindstrom:

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# 450139.

The Texas Facilities Commission (the "commission") received a request for all submitted proposals and tabulation score sheets with notes pertaining to request for proposals number 303-1-10833.¹ You state you have released some information to the requestor, with some information redacted under section 552.147(b) of the Government Code and section 552.136 of the Government Code pursuant to Open Records Letter No. 684 (2009).²

¹We note the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if a 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); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

²Section 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including access device numbers under section 552.136, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code on behalf of a third party, Corporate Facilities Management Services, LLC (“CFMS”). You state, and provide documentation showing, you notified CFMS of the request and of its right to submit arguments to this office explaining why its information should not be released. *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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor has excluded from his request financial information. Thus, this information is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the commission need not release any such information.

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) 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 not received arguments from CFMS. Thus, we have no basis for concluding any portion of the submitted information constitutes CFMS’s proprietary 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. On behalf of CFMS, however, you assert the submitted information may be excepted under section 552.110 of the Government Code. Although you assert the submitted information is excepted under section 552.110 of the Government Code, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Therefore, because we have received no arguments from CFMS, the commission may not withhold any of the submitted information under section 552.110 of the Government Code.

We note the submitted information contains information subject to section 552.136 of the Government Code.³ Section 552.136 provides “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded an insurance policy number is an access device number for purposes of section 552.136. *See*

³The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Open Records Decision No. 684 at 9 (2009). Therefore, the commission must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

In summary, the commission must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. 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, 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 450139

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John Alaniz
Mr. Weldon Edwards
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P.O. Box 4783
Temple, Texas 76505-4783
(w/o enclosures)

