



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2012

Ms. Susan D. Banowsky
For Texas Windstorm Insurance Association
Bickham & Banowsky, L.L.P.
111 Congress Avenue, Suite 400
Austin, Texas 78701

OR2012-11207

Dear Ms. Banowsky:

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# 459387.

The Texas Windstorm Insurance Association (the "association"), which you represent, received two requests for multiple categories of information pertaining to IT department personnel. You state you are releasing some of the requested information. Although you take no position with respect to the public availability of the submitted information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified ITS Property and Casualty Consulting, Inc. ("ITS"); Amentra, Inc. ("Amentra"); Athens Group, Inc. ("Athens"); and TEKsystems Global Services, LLC ("TEK") of the requests and of their right to submit arguments to this office explaining why their 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 reviewed the submitted information.

Initially, we must address the association's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten-business-days after receiving the request. *See Gov't Code § 552.301(b)*. You state the association received the first request for information on April 27, 2012. This office does not count the day the request was received

or holidays, including skeleton crew days observed by a governmental body, as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the association's ten-business-day deadline was May 11, 2012. However, the envelope in which you submitted your request for a decision bears a post mark date of May 12, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the association failed to comply with the requirements of section 552.301 with regards to the first request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether or not any of the submitted information is exempted under the Act.

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 not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from ITS, Amentra, Athens, or TEK. Thus, none of these third parties has demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 association may not withhold the submitted information on the basis of any proprietary interests ITS, Amentra, Athens, or TEK may have in the information.

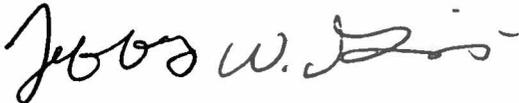
We note some of the information being released is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection 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.

Accordingly, the information must be released, but any information subject to copyright may only 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 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 459387

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

ITS Property and Casualty Consulting, Inc.
Amentra, Inc.
Athens Group, Inc.
TEKsystems Global Services, LLC
c/o Ms. Susan D. Banowsky
Bickham & Banowsky, L.L.P.
111 Congress Avenue, Suite 400
Austin, Texas 78701
(w/o enclosures)