



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2012

Mr. Carey E. Smith  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2012-19349

Dear Mr. Smith:

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# 472556 (OR-20120912-7244).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to performance standards involving Logisticare Solutions, L.L.C. ("Logisticare"). You state the commission is releasing some information to the requestor. Although the commission takes no position as to the public availability of the submitted information, you state the proprietary interests of Logisticare and its subcontractors might be implicated. Accordingly, you provided notice of the request to Logisticare and its subcontractors and notified them of their right to submit arguments to this office explaining why their information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting

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<sup>1</sup>The notified subcontractors are: 4 Wheels Transportation; ABC Transportation; ABY Medical Transportation; Adawi Transportation, L.L.C.; AET Custom Shuttle; Aftonis Transportation; Agha Logisticare, L.L.C.; AIA Logistics, L.L.C.; All Citizens Transportation; All In One Transportation, L.L.C.; Allied Medico, Inc.; Ambassador Cab; American Medical Transport; Arredondo Transport; Basem Enterprises, L.L.C.; Batol, Inc.; Bridges Medical Transportation; City of Cleburne; Comfort Care Logistics; Cowboy Cab & Ranger Cab; DFW 24-7, Inc.; Doushon, Inc.; EKAD, L.L.C.; Elite NEMT, L.L.C.; Euphorialogix; Executive Taxi, Golden; Fire Emergency Medical Services, L.L.C.; First Med Ride, L.L.C.; Fish Transportation; G&D Medical Transportation, L.L.C.; Graham NEMT Services, L.L.C.; GTS Transportation, Inc; Hadrin Transport Corporation; Hanini, L.L.C.; Heart to Heart Provider, L.L.C.; Integhearty Ambulance Services; Intercity Transmedic; Keso Enterprises, L.L.C.; KGN Medical Transporters; Kind Days for Medical Assistant Services; KWI Enterprises, Inc.; LA Howard Medical Transportation; M&P Transport; Mardi Corp/United Cab; Marey

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). You inform us Logisticare does not object to the release of any information at issue. We have reviewed the submitted information.

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, we have not received comments from any of the notified subcontractors explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude any of the subcontractors has any 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. Consequently, the commission may not withhold any of the submitted information on the basis of any proprietary interest the subcontractors may have in the information.

We note portions of the submitted information are subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130(a)(2) provides that information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). The commission must withhold the vehicle identification numbers we have marked under section 552.130(a)(2) of the Government Code.

We note 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

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Enterprises, Inc.; Metro Transporters; Morning Transport, L.L.C.; Nearby Transportation Service; New Way; Nice Day, L.L.C.; Nigussu Medical Transportation, L.L.C.; Onyx Non-Emergency Services; Oscar Spencer International; Paradise Prime Investments, Inc.; Patient Care Ride; Prompt Transit Service; PTS - Public Transit Services; Real Time Transport Corporation; Reem Transportation; Servco Enterprise d/b/a Tire Mart; Sihan, Inc.; Solo S Transport, L.L.C.; Star Transit; Starr Care; T. Hassan Enterprises, Inc.; Taib Transportation, L.L.C.; Tana Care Transportation, Inc.; Tasmiah Transport, L.L.C.; Terry, Inc.; Thamau Transportation, L.L.C.; The Texstar Group; TX-MED Transportation, Inc.; Wagon Wheel Transportation; Wheelchair Rolls, L.L.C.; Wiley Express Transport, L.L.C.

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

In summary, the commission must withhold the vehicle identification numbers we have marked under section 552.130 of the Government Code. The remaining information must be released, but any information that is protected by 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 472556

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

All Third Parties  
(w/o enclosures)