



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2013

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2013-06113

Dear Ms. Alexander:

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# 484182.

The Texas Department of Transportation (the "department") received a request for the bid tabs and bid proposals for eleven specified solicitation numbers. You state you have released some of the requested information. Although you take no position with respect to the public availability of the submitted information, you state the request may implicate the proprietary interests of American Signal Equipment Company; American Traffic Control, Inc.; CJ Hensch & Associates; Chitwood, Inc.; Ecom Consulting, Inc.; Ericsson Federal, Inc.; Flasher Equipment Company; Gram Traffic Counting; Highway Technologies; Interstate Barricades & Markings, Inc.; KH Consulting & Design; MCV Associates, Inc.; N-Line Traffic Maintenance ("N-Line"); Personal Care, Inc.; Quality Counts, LLC; and Southern Traffic Service. Accordingly, you notified these entities of this request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from N-Line. We have considered the submitted arguments and reviewed the submitted information.

You state some of the requested information is subject to a previous determination issued by this office in Open Records Letter No. 2011-05566 (2011). In that ruling, we concluded the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy and the insurance policy numbers we marked under section 552.136 of the Government Code. We further concluded the department may withhold the e-mails we marked under section 552.107 of the Government Code and must release the remaining information. You indicate the law, facts, or circumstances on which

the prior ruling was based have not changed. Thus, we conclude the department may rely on the prior ruling as a previous determination and withhold the information at issue in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

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) 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, this office has received comments from only N-Line explaining why its information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the requested information would implicate the interests of any of the remaining third parties. *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, we conclude the department may not withhold any of the submitted information on the basis of any interest the remaining third parties may have in the information.

N-Line claims some of its information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). However, section 552.102 applies to only information in the personnel file of a governmental employee. *See id.* Therefore, we find section 552.102 is not applicable and the department may not withhold any of the information at issue on that basis.

N-Line also raises section 552.104 of the Government Code. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). This exception protects the competitive interests of governmental bodies, such as the department, not the proprietary interests of private parties. In this instance, the department does not raise section 552.104 as an exception to disclosure. Therefore, the department may not withhold any of the submitted information under section 552.104.

We note some of the submitted information is subject to sections 552.130 and 552.136 of the Government Code.¹ Section 552.130 of the Government Code provides information relating

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We conclude the department must withhold the information we have marked under section 552.130.

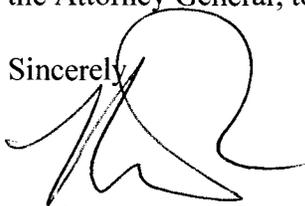
Section 552.136 of the Government Code states, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Accordingly, the department must withhold the insurance policy numbers we have marked under section 552.136.

In summary, the department may continue to rely on Open Records Letter No. 2011-05566 as a previous determination and withhold or release the information at issue in accordance with that ruling. The department must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The department must release the remaining information.²

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

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²We note the information being released contains social security numbers. 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 under the Act. Gov't Code § 552.147(b).

Ref: ID# 484182

Enc. Submitted documents

c: Requestor
(w/o enclosures)

American Signal Equipment
P.O. Box 700961
San Antonio, Texas 78270-0961
(w/o enclosures)

Gram Traffic Counting
21220 Jakeshill Road, Building 1
Hutto, Texas 78634-5475
(w/o enclosures)

American Traffic Control
P.O. Box 772973
Houston, Texas 77215-2973
(w/o enclosures)

Highway Technologies
12909 Dessau Road
Austin, Texas 78754
(w/o enclosures)

C J Hensch & Associates
5215 Sycamore Avenue
Pasadena, Texas 77503-3949
(w/o enclosures)

Interstate Barricades & Markings Inc.
18219 County Road 127
Pearland, Texas 77406
(w/o enclosures)

Chitwood Inc.
P.O. Box 293
Atoka, Oklahoma 74525-0293
(w/o enclosures)

KH Consulting & Design
P.O. Box 1565
Richmond, Texas 77406
(w/o enclosures)

Ecom Consulting, Inc.
3400 Silverstone Drive, Suite 189
Plano, Texas 75023
(w/o enclosures)

MCV Associates
3400 Silverstone Drive, Suite 119
Plano, Texas 75023-7843
(w/o enclosures)

Ericsson Federal
Suite 300
1895 Preston White Drive
Reston, Virginia 20791-5449
(w/o enclosures)

Mr. David Gormon
N-Line Traffic Maintenance
P.O. Box 4750
Bryan, Texas 77805-4750
(w/o enclosures)

Flasher Equipment Co.
P.O. Box 12637
San Antonio, Texas 78212
(w/o enclosures)

Personal Care
D/B/A De Walt Construction
17515 Spring-Cypress, Suite C-229
(w/o enclosures)

Quality Counts
Suite 302
16285 South West 85th Avenue
Tigard, Oregon 97224-5423
(w/o enclosures)

Southern Traffic Service
2911 Westfield Road
Gulf Breeze, Florida 32563
(w/o enclosures)