



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2014

Ms. Ashley D. Fourt
Assistant City Attorney
Office of the Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2014-18628

Dear Ms. Fourt:

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# 539888.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received two requests from different requestors for the vendor proposals for the annual contract for the customer queuing system.¹ The district attorney's office states it has released some of the requested information. Although the district attorney's office takes no position as to whether the submitted information is excepted under the Act, the district attorney's office states release of the submitted information may implicate the proprietary interests of Horizon Technical Systems, Inc.; Lavi Industries; Nemo-Q; QLess, Inc.; Tensator, Inc. ("Tensator"); and TouchMate, Inc.² Accordingly, the district attorney's office states, and provides documentation showing, the district attorney's office notified the third parties of the request for information and of their right to submit arguments to this office as to why the

¹We note the district attorney's office sought and received clarification of the first information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 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).

²We note the district did not comply with section 552.301 of the Government Code in requesting this decision as to the first request. *See* Gov't Code § 552.301(b). Nonetheless, because third party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on third party interests. *See id.* §§ 552.007, .302, .352.

submitted information 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 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 third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties has 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the district attorney's office may not withhold the submitted information on the basis of any proprietary interests the third parties may have in the information.

We note the submitted information contains information subject to section 552.136 of the Government Code, which 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."³ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. We note section 552.136 protects privacy interests. The district attorney's office indicates the first requestor is the authorized representative of Tensator, whose insurance policy numbers are at issue. Section 552.023(a) states "a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *Id.* § 552.023; *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, she has a right of access to the insurance policy numbers at issue. Accordingly, the district attorney's office may not withhold the insurance policy numbers at issue from the first requestor under section 552.136. However, the district attorney's office must withhold the insurance policy numbers at issue from the second requestor under section 552.136 of the Government Code.

We note some of the remaining information may be 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). A governmental body must allow inspection of copyrighted materials unless an exception applies to the

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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 district attorney's office must withhold the insurance policy numbers at issue from the second requestor under section 552.136 of the Government Code. The district attorney's office must release the remaining information; however, any information subject to copyright may be released only 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 539888

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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