



January 20, 2015

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

OR2015-01065

Dear Ms. Calem-Lindström:

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# 553111.

The Texas Facilities Commission (the "commission") received a request for thirteen categories of information relating to a specified project. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state release of this information may implicate the proprietary interests of EG Sierra, LLC ("EG Sierra"). Accordingly, you state, and provide documentation showing, you notified EG Sierra of the request for information and of its right to submit arguments to this office as to why the 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 considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted information related to EG Sierra's proposal. Thus, to the extent any other responsive information existed and was maintained by the commission on the date the commission received the request for information, we presume the commission has released it. If not, the commission must do so at this time. *See Gov't Code* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental

body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, you state EG Sierra marked some of the submitted information as confidential when it provided the information to the commission. We note information is not confidential under the Act simply because the party that submits the information to a governmental body anticipates it will be kept confidential or requests that it be kept confidential. *See Indus. Found, v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Although the commission raises section 552.110 of the Government Code for the submitted information, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the commission’s argument under section 552.110. We further 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 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 EG Sierra explaining why its information should not be released. Therefore, we have no basis to conclude EG Sierra 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, 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 commission may not withhold any of the information at issue on the basis of any proprietary interest EG Sierra may have in it.

The submitted information contains insurance policy numbers subject to section 552.136 of the Government Code.¹ Section 552.136(b) of the Government Code 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access

¹The 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).

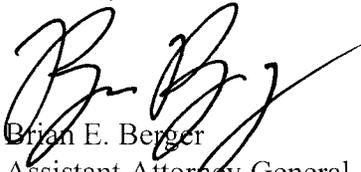
device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the commission must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the commission must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. As no further exceptions to disclosure are raised, 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.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 553111

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Erendira Garner
E.G. Sierra, LLC
108 North Main Street
Belton, Texas 76513
(w/o enclosures)