



February 24, 2015

Mr. Brian Nelson  
General Counsel and Chief Legal Officer  
Office of the General Counsel  
Lone Star College System  
5000 Research Forest Drive  
The Woodlands, Texas 77381-4356

OR2015-03564

Dear Mr. Nelson:

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# 554506 (LSCS File Nos. PR15-1125-00042, PR15-1126-00045, and PR15-1126-00046).

The Lone Star College System (the "system") received requests from three requestors for information related to the janitorial service contract for all system campuses, to include pricing information and current contracts. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state the request may implicate the proprietary interests of certain third parties. Accordingly, you notified the third parties of the requests for information and of their rights 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 exception you claim and reviewed the submitted information.

Initially, we must address the system's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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 id.* § 552.301(b). The submitted documentation reflects the system received the first request for information on November 25, 2014. You inform us the system was closed November 27, 2014, and November 28, 2014, for the Thanksgiving holiday. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the system's ten-business-day deadline under section 552.301(b) was December 11, 2014. However, the system did not submit a written request for a ruling and state the exceptions to disclosure that apply to this office until December 12, 2014. Consequently, we find the system failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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). Section 552.104 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Thus, in failing to comply with the procedural requirements of section 552.301, the system has waived its claim under section 552.104 with regard to the first request. Further, we note in waiving section 552.104 for the information in the first request, the system also waived this claim for the information with respect to the second and third requests for information. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Accordingly, the system may not withhold any portion of the submitted information under section 552.104 of the Government Code. However, because section 552.136 of the Government Code and third party interests can provide compelling reasons to withhold information, we will consider their applicability to the submitted information.<sup>1</sup>

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

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<sup>1</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).

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties at issue explaining why their 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, 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 system may not withhold any of the information at issue on the basis of any proprietary interest the third parties may have in it.

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 device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the system must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

We note some of the remaining information 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.

In summary, the system must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The system must release the remaining information; however, any information 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 554506

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

Mr. Mike Boschert  
WFF Facility Services  
211 South Jefferson Avenue  
St. Louis, Missouri 63103  
(w/o enclosures)

Mr. Curtis McLemore  
McLemore Building Maintenance, Inc.  
110 Fargo  
Houston, Texas 77006-2014  
(w/o enclosures)

Mr. Steve Golson  
ABM Janitorial Services -  
South Central, Inc.  
3800 Buffalo Speedway, Suite 325  
Houston, Texas 77098  
(w/o enclosures)