



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 16, 2015

Ms. Sally Jo Hahn  
Associate General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731

OR2015-04921

Dear Ms. Hahn:

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# 556739.

The Texas Department of Motor Vehicles (the "department") received a request for a specified contract, as well as invoices associated with the specified contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of PrintMailPro, LTD ("PrintMailPro"). Accordingly, you state, and provide documentation showing, you notified PrintMailPro 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 reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. 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). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You inform us the department received the request for information on December 10, 2014. We understand the department was closed for winter holidays from December 24, 2014, to December 26, 2014, and for New Year's Day on January 1, 2015. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(b) by December 29, 2014, and the information required by section 552.301(e) by January 6, 2015. This office received your request for a decision on January 8, 2015. However, the envelope in which the department provided the information required by section 552.301(b) does not bear a discernible postmark. Furthermore, the department has not furnished satisfactory proof its request for a decision was deposited in the mail within the ten-business-day deadline. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of 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). Because section 552.136 of the Government Code and third-party interests can provide compelling reasons to overcome this presumption, we will consider whether the submitted information may be withheld on either of those bases.<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*

---

<sup>1</sup>The 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).

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from PrintMailPro explaining why the submitted information should not be released. Therefore, we have no basis to conclude PrintMailPro 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 department may not withhold the submitted information on the basis of any proprietary interest PrintMailPro 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.” 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. Upon review, the department must withhold the insurance policy numbers contained 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 department must withhold the insurance policy numbers contained in the submitted information under section 552.136 of the Government Code. The remaining information must be released; 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,

A handwritten signature in black ink, appearing to read 'JTBH', with a long horizontal line extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 556739

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Keith Daboub  
PrintMailPro, LTD  
2500 McHale Court, Suite 100  
Austin, Texas 78758  
(w/o enclosures)