



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2015

Mr. Vance Hinds  
Assistant Ellis County and District Attorney  
Ellis County and District Attorney  
109 South Jackson  
Waxahachie, Texas 75165

OR2015-15297

Dear Mr. Hinds:

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# 572993.

The Ellis County Judge's Office (the "county judge's office") received a request for all information related to complaints against specified individuals and correspondence to or from the county fire marshal's office. You indicate you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.130 and 552.137 of the Government Code. Moreover, you claim some of the information implicates the proprietary interests of a third party, ISO Properties, Inc. ("ISO"). You state, and provide documentation showing, you notified ISO of the request for information and of its 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) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 exceptions you claim and reviewed the submitted information.

Initially, 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 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 ISO. Therefore, we have no basis to conclude ISO 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 county judge's office may not withhold any of the submitted information on the basis of any proprietary interests ISO may have in the information.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address you have marked, and the additional email address we have marked, are not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the county judge's office must withhold the e-mail address you have marked, and the additional e-mail address we have marked, under section 552.137, unless the owners of the addresses affirmatively consent to their release.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Upon review, we find a portion of the information you have marked is not subject to section 552.130. Accordingly, with the exception of the information we have marked for release, the county judge's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

We note portions of the remaining information may be subject to section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Section 552.1175 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Section 552.1175

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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).

applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” Gov’t Code § 552.1175(a)(1). Some of the remaining information may pertain to a peace officer not employed by the county judge’s office. Thus, to the extent the information we have marked consists of personal cellular telephone number of a currently licensed peace officer and the officer elected to restrict access to his information in accordance with section 552.1175(b), the county judge’s office must withhold the information we have marked under section 552.1175. However, the county judge’s office may not withhold this information if the cellular telephone service is paid for by a governmental body. If the individual whose information we have marked is no longer a licensed peace officer or no election is made, the county judge’s office may not withhold this information under section 552.1175.

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 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 county judge’s office must withhold the e-mail address it has marked, and the additional e-mail address we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. With the exception of the information we have marked for release, the county judge’s office must withhold the information it has marked under section 552.130 of the Government Code. If the individual whose information we have marked is still a licensed peace officer and elects to restrict access to his information, the county judge’s office must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code, if the cellular telephone service is not paid for by a governmental body. The remaining information must be released; however, the information subject to copyright must 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 "Mili Gosar". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 572993

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

ISO Properties, Inc.  
4030 South Braker Lane, Suite 350  
Austin, Texas 78759  
(w/o enclosures)