



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 20, 2015

Mr. Ray Rodriguez  
Assistant City Attorney  
Office of the City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2015-24412

Dear Mr. Rodriguez:

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# 587978 (COA File Nos. W095136-090115 & W098562-100115).

The City of San Antonio (the "city") received two requests for information pertaining to request for proposals number 15-025. Although the city takes no position with respect to the public availability of the submitted information, the city states the requests implicate the proprietary interests of third parties. Accordingly, the city notified Alanis Wrecker Service, TEGSCO, LLC ("AutoReturn"), TXTOWCorp. d/b/a Texas Towing, and United Road Towing, Inc. d/b/a UR Vehicle Management Solutions ("URVMS") of the requests for information and of their 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 received comments on behalf of AutoReturn and URVMS. We have considered the submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from AutoReturn and URVMS. Thus, we have no basis to conclude any of the remaining third parties have protected proprietary interests

in the submitted information. *See id.* § 552.110(a)-(b); 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 city may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

AutoReturn and URVMS raise section 552.104 of the Government Code for portions of their submitted information. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. AutoReturn and URVMS state they have competitors. In addition, AutoReturn and URVMS state release of the information they have indicated regarding services, clients, and finances would result in competitive harm. After review of the information at issue and consideration of the arguments, we find AutoReturn and URVMS have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information AutoReturn and URVMS have indicated under section 552.104(a).<sup>1</sup>

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as follows:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the submitted information contains confidential tax return information under section 6103(a). Accordingly, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

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 Gov’t Code § 552.130*. The remaining information contains motor vehicle record information, which we have indicated. However, we are unable to determine whether the information at issue constitutes actual motor vehicle record information for purposes of section 552.130 or whether it is fictitious motor vehicle information created as a sample for purposes of responding to the request for proposals at issue. Thus, to the extent the information we have indicated constitutes actual motor vehicle record information, the city must withhold such information under section 552.130 of the Government Code. To the extent the information we have indicated consists of fictitious motor vehicle record information, it may not be withheld under section 552.130.

Section 552.136 of the Government Code provides. “Notwithstanding 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.” *Id.* § 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. Accordingly, the city must withhold the routing, bank account, and insurance policy numbers within the remaining documents under section 552.136 of the Government Code.

In summary, the city may withhold the information AutoReturn and URVMS have indicated under section 552.104(a) of the Government Code. The city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. To the extent the information we have indicated constitutes actual motor vehicle record information, the city must withhold such information under section 552.130 of the Government Code. The city must withhold the routing, bank account, and insurance policy numbers within the remaining documents under section 552.136 of the Government Code. The city must release the remaining information.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 587978

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

TEGSCO  
c/o Mr. Matthew K. Yan  
Moscone Emblidge & Otis  
Suite 2100  
220 Montgomery Street  
San Francisco, California 94104  
(w/o enclosures)

United Road Towing  
c/o Mr. Bernard F. Crotty  
Law Office of Bernard F. Crotty  
Suite 302  
9550 West Bormet Drive  
Mokena, Illinois 60448  
(w/o enclosures)

Alanis Wrecker Services  
1035 Culebra Road  
San Antonio, Texas 78201  
(w/o enclosures)

AutoReturn  
450 7<sup>th</sup> Street  
San Francisco, California 94103  
(w/o enclosures)s

TXTOW Corp  
4702 Center Park Boulevard  
San Antonio, Texas 78218  
(w/o enclosures)