



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 7, 2016

Ms. Leila H. Melendez  
Finance and Administrative Services Manager  
Workforce Solutions Borderplex  
300 East Main Street  
El Paso, Texas 79901

OR2016-07872

Dear Ms. Melendez:

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# 604634.

Workforce Solutions Borderplex ("WSB") received a request for specified information pertaining to a specified request for proposals. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.153 of the Government Code. You also state you notified Incite Consultancy, LLC ("Incite") 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 exceptions you claim and reviewed the submitted information.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code* § 552.110(a)-(b). Although WSB argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address WSB's argument under section 552.110. 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Incite explaining why the submitted information should not be released. Therefore, we have no basis to conclude Incite has protected proprietary interests 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 party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, WSB may not withhold the submitted information on the basis of any proprietary interest Incite may have in the information.

Section 552.153 of the Government Code protects proprietary records and trade secrets involved in certain partnerships under chapter 2267 of the Government Code and provides, in part:

(a) In this section, “affected jurisdiction,” “comprehensive agreement,” “contracting person,” “interim agreement,” “qualifying project,” and “responsible governmental entity” have the meanings assigned those terms by [s]ection 2267.001.

(b) Information in the custody of a responsible government entity that relates to a proposal for a qualifying project authorized under [c]hapter 2267 is excepted from the requirements of [the Act] if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a contracting person to a responsible governmental entity or affected jurisdiction under [c]hapter 2267 and contain:

(A) trade secrets of the contracting person;

(B) financial records of the contracting person, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) other information submitted by the contracting person that, if made public before the execution of an interim or comprehensive agreement, would adversely affect the financial interest or bargaining position of the responsible governmental entity or the person.

Gov't Code § 552.153(a)-(b). Section 2267.001(10) of the Government Code provides “qualifying project” means:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, technology facility, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project’s purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

*Id.* § 2267.001(10). Further, section 2267.001(11) provides that “responsible governmental entity” means “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). However, WSB has failed to demonstrate the information relates to a proposal for a qualifying project authorized under chapter 2267 of the Government Code. Accordingly, we find WSB may not withhold any portion of the submitted information under section 552.153 of the Government Code.

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.”<sup>1</sup> *Id.* § 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.

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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).

Accordingly, WSB 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 appears to 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, WSB must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. WSB must release the remaining information; however, any information subject to 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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bw

Ref: ID# 604634

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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