



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2016

Ms. Leslie O. Haby
Assistant Criminal District Attorney
Civil Section
Bexar County
101 West Nueva
San Antonio, Texas 78205

OR2016-09091

Dear Ms. Haby:

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# 607001.

Bexar County (the "county") received a request for information relating to a specified negotiation, including the purchase agreement, solicitations, proposals submitted by responding vendors, and the county Commissioners Court's approval of any related agreement. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, you inform us release of this information may implicate the proprietary interests of CourtView Justice Solutions and Sistema Technologies, Inc. Accordingly, the county states, and provides documentation showing, it notified these third parties of the request for information and of their 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); 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 you have only submitted proposals the county received from responding vendors to this office for our review. We assume, to the extent any remaining requested information existed on the date the county received the request, the county has released it.

If the county has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the county's 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), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (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. *See id.* § 552.301(e). You state the Bexar County Criminal District Attorney's Office did not receive a copy of the instant request from the county until February 9, 2016. However, you acknowledge the county received the request for information on January 21, 2016. We note the Act's deadlines are triggered by the receipt of a written request by a governmental body, not by the actual receipt of the request by the specific person whose responsibility it is to respond to the request. *See id.* § 552.301(b). You do not inform us the county was closed for any business days between January 21, 2016, and February 11, 2016. Accordingly, we find the county's ten-business-day deadline under section 552.301(b) was February 4, 2016, and the county's fifteen-business-day deadline under section 552.301(e) was February 11, 2016. However, the envelope in which the county requested a ruling from this office bears a postmark dated February 12, 2016. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the county failed to comply with the procedural requirements of 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See id.* The county claims sections 552.104 and 552.111 of the Government Code for the submitted information. However, these exceptions are discretionary in nature and do not make information

confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Accordingly, no portion of the submitted information may be withheld under section 552.104 or section 552.111. However, we note third party interests are at stake in this instance and portions of the submitted information are subject to section 552.136 of the Government Code, which makes confidential under the Act.¹ Thus, we will address the public availability of the submitted information.

Next, 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) of the Government Code 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 any notified third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any notified third party 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 may not withhold the submitted information on the basis of any proprietary interest a notified third party may have in the information.

Section 552.136 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 determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, we find the county must withhold the insurance policy numbers we marked in the submitted information under section 552.136. As no other exceptions to disclosure have been raised, the remaining information must be released.

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.

¹The 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).

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, 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 "Cole Hutchison", with a long horizontal flourish extending to the right.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 607001

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)