



January 13, 2015

Mr. K. Scott Oliver  
Corporate Counsel  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449

OR2015-00603

Dear Mr. Oliver:

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# 549802.

The San Antonio Water System (the "system") received a request for the winning bidder's proposal for Solicitation No. R-14-005-DB. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of this information may implicate the proprietary interests of American Appraisal Associates, Inc. ("American Appraisal"). Accordingly, you state you notified American Appraisal 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); *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 from American Appraisal. We have considered the submitted arguments and reviewed the submitted information.

American Appraisal raises section 552.110(b) of the Government Code for some of its information. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely

result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999).

American Appraisal contends some of the submitted information, including portions of its customer information, is commercial or financial information, the release of which would cause substantial competitive harm. Upon review, we find American Appraisal has demonstrated the portions of its customer information it seeks to withhold constitute commercial or financial information, the release of which would cause American Appraisal substantial competitive injury. Accordingly, to the extent American Appraisal's customer information is not publicly available on its website, the system must withhold the information we have marked under section 552.110(b). However, we find American Appraisal has failed to demonstrate that the release of any of the remaining information at issue would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Accordingly, none of the remaining information may be withheld under section 552.110(b).

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."<sup>1</sup> 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, the system must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

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.

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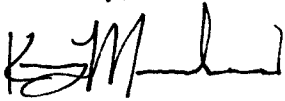
<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent American Appraisal's customer information is not publicly available on its website, the system must withhold the portions of American Appraisal's customer information we have marked under section 552.110(b) of the Government Code. The system must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The system must release the remaining information; 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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 549802

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)