



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2015

Ms. Patricia M. Crawson  
Chief Warrant Officer 2  
FOIA Manager  
Texas Military Forces  
P.O. Box 5218  
Austin, Texas 78763-5218

OR2015-18828

Dear Ms. Crawson:

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# 578709.

The Texas Military Forces ("TMF") received a request for the winning proposal and winning bid amount for a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of OSIYO Group ("OSIYO"). Accordingly, you state you notified OSIYO 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). You have provided us with comments from OSIYO. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We note TMF did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the argument of the interested third party to withhold the information at issue.

Initially, we note TMF has redacted portions of the submitted information. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, TMF should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

OSIYO raises section 552.104(a) of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder."<sup>2</sup> *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*7 (Tex. June 19, 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 \*9. OSIYO does not make any arguments explaining how section 552.104 applies to its submitted information. Upon review, we find OSIYO has failed to demonstrate the release of its information would give advantage to a competitor or bidder. Accordingly, TMF may not withhold any of OSIYO's information under section 552.104 of the Government Code.

Section 552.110(b) of the Government Code 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) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

We understand OSIYO to argue some of its information consists of commercial and financial information, the release of which would cause it substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find OSIYO has failed to demonstrate the release of any of its information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661, 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

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<sup>2</sup>Although OSIYO does not cite to section 552.104 in its comments, we understand OSIYO to raise this exception based on the substance of its arguments.

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 submitted information may be withheld under section 552.110(b) of the Government Code.

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>3</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, TMF must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, TMF must withhold the insurance policy number we have marked under section 552.136 of the Government Code. TMF 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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

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<sup>3</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).

Ref: ID# 578709

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Ronetta Briggs  
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Dallas, Texas 75248  
(w/o enclosures)