



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 1, 2016

Ms. Sarah Parker  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2016-24326

Dear Ms. Parker:

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# 632863.

The Texas Department of Transportation (the "department") received two requests for bid packets for two specified vendors pertaining to a specified request for procurement. Although you take no position as to whether the submitted information is excepted under the Act, you state the release of this information may implicate the proprietary interests of SWS Environmental Services ("SWS") and Hazmat International ("HMI"). Accordingly, you state, and provide documentation showing, you notified SWS and HMI of the request for information and of their rights 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 Act in certain circumstances). We have 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 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from SWS or HMI explaining why the information should not be released. Therefore, we have no basis to conclude SWS or HMI 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 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 department may not withhold any of the information at issue on the basis of any proprietary interest SWS or HMI may have in it.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>1</sup> Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. Thus, to the extent the information we have marked relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), and a governmental body does not pay for the cellular services it must be withheld from disclosure under section 552.1175 of the Government Code. If the individual whose information is at issue is not a currently licensed peace officer, does not elect to restrict access to the information in accordance with section 552.1175(b), or a governmental body pays for the cellular telephone service, the marked information may not be withheld under section 552.1175.

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." Gov't Code § 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. Accordingly, the department must withhold the insurance policy numbers we marked in the submitted information under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.1175 of the Government Code if the individual whose information is at issue is a licensed peace officer, he elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not paid for by a governmental body. The department must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The department must release the remaining information.

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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).

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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/eb

Ref: ID# 632863

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)