



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2016

Ms. Angela Hough  
Assistant General Counsel  
North Texas Tollway Authority  
P. O. Box 260729  
Plano, Texas 75026

OR2016-26621

Dear Ms. Hough:

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# 636557 (File No. 2016-02495).

The North Texas Tollway Authority (the "authority") received a request for a specified contract and any contracts regarding specified services. You state you have released some information to the requestor. 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 J & J Towing, Inc. ("J & J"), Jordan Towing, Inc. ("Jordan Towing"), and Texas Towing, Inc. ("Texas Towing"). Accordingly, you state, and provide documentation showing, you notified J & J, Jordan Towing, and Texas Towing 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.

Initially, we must address the obligations of the authority under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't

Code § 552.301(b). In this instance, you state, and submit documentation demonstrating, the department received the request for information on September 6, 2016. Accordingly, the authority's ten-business-day deadline was September 20, 2016. However, you submitted the written request for a ruling in an envelope postmarked September 21, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the authority failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, because third-party interests are at issue and can provide compelling reasons to overcome the presumption of openness, we will consider whether the information may be withheld based on the interest of any third party. Further, because section 552.136 of the Government Code makes information confidential, we will address whether that exception to disclosure applies to the submitted information.<sup>1</sup>

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 J & J, Jordan Towing, or Texas Towing explaining why the information should not be released. Therefore, we have no basis to conclude J & J, Jordan Towing, or Texas Towing 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 authority may not withhold any of the information at issue on the basis of any proprietary interest J & J, Jordan Towing, or Texas Towing may have in it.

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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).

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 authority must withhold the insurance policy numbers we marked in the submitted information under section 552.136 of the Government Code.

In summary, the authority must withhold the insurance policy numbers we marked in the submitted information under section 552.136 of the Government Code. The authority 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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/eb

Ref: ID# 636557

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)