



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2017

Ms. Michele Freeland
Legal Assistant
Office of General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773

OR2017-00036

Dear Ms. Freeland:

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# 640187 (PIR# 16-5950).

The Texas Department of Public Safety (the "department") received a request for all vendor proposals, letters and e-mails to and from the vendors and the department, final offers, purchase orders, contracts, and contract award documents relating to 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 the submitted information may implicate the proprietary interests of IBM Corporation ("IBM"), Thinkstream Acquisition ("Thinkstream"), Optimum Technology ("Optimum"), and Micro Assist ("Micro").¹ Accordingly, you state, and provide documentation showing, you notified IBM, Thinkstream, Optimum, and Micro of the request for information and of their right 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

¹You acknowledge and we agree, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See Gov't Code* § 552.301(b). Nevertheless, section 552.136 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. This office 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). Thus, we will consider the applicability of those sections to the submitted information.

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 reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-22065 (2016). In Open Records Letter No. 2016-22065, we concluded, (1) the department must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, (2) the department must withhold certain information under section 552.136 of the Government Code, and (3) the department must release the remaining information. We have no indication the law, facts, or circumstances on which Open Records Letter No. 2016-22065 was based have changed. Accordingly, to the extent the requested information is identical to the information previously ruled on by this office, we conclude the department must continue to rely on Open Records Letter No. 2016-22065 as a previous determination and withhold or release the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

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 any of the interested third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the interested third parties 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 department may not withhold the submitted information on the basis of any proprietary interest any of the interested third parties may have in the information.

Section 552.136 of the Government Code provides, "Notwithstanding 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. Accordingly, the department must withhold the information we have marked under section 552.136 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously ruled on by this office, we conclude the department must continue to rely on Open Records Letter No. 2016-22065 as a previous determination and withhold or release the information in accordance with that ruling. The department must withhold the information we have marked under section 552.136 of the Government Code. The department must release the remaining information.²

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, 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 640187

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)

²We note the information being released includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).