



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2017

Mr. William Schultz
Assistant District Attorney
Denton County
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2017-11250

Dear Mr. Schultz:

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# 659065 (PIR #17-045).

Denton County (the "county") received a request for all documentation for a specified request for proposal, specifically all submissions, responses, scoring, communications and final contract documentation. You state you will release some information. You claim a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of interested third parties. Accordingly, you state you notified Fugro Geospatial, Inc.; Pictometry International Corp.; Sanborn Mapping Company; and Kucera International Inc. 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 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 considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 262.030(c) of the Local Government Code provides a competitive proposal procedure for the purchase of high technology items by a county, and states, in pertinent part:

(c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

Local Gov’t Code § 262.030(c). In general, section 552.101 only excepts information from disclosure where the express language of a statute makes certain information confidential or states that information shall not be released to the public. Open Records Decision No. 478 (1987). The plain language of section 262.030(c) does not expressly make bid proposals confidential. Accordingly, we determine the requested information is not confidential pursuant to section 262.030(c). Thus, the county may not withhold any portion of the information at issue pursuant to section 552.101 of the Government Code in conjunction with section 262.030 of the Local Government Code.

Although you raise section 552.110 of the Government Code, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See* Gov’t Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party); *see generally* Open Records Decision No. 592 (1991). Thus, we do not address your argument under section 552.110. 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 any of the specified third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the specified 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 county may not withhold the submitted information on the basis of any proprietary interest any of the specified third parties may have in the information.

We note some of the submitted information may be subject to section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The county may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 and the marked cellular telephone number is not paid for by a governmental body, the county must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, the county may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code states “[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 determined an insurance policy number is an access device for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). The remaining information contains an insurance policy number, and ABA routing and account numbers. However, we are unable to determine if these account numbers are fictitious numbers. Thus, to the extent the insurance policy number, and ABA routing and account numbers in the remaining information constitute actual policy and account numbers, the county must withhold them under section 552.136 of the Government Code. To the extent these numbers are fictitious, they may not be withheld under section 552.136.

We note some of the materials at issue 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

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

In summary, if the employee whose information is at issue timely elected confidentiality and the marked cellular telephone number is not paid for by a governmental body, the county must withhold the information we marked under section 552.117(a)(1) of the Government Code. To the extent the insurance policy number, and the ABA routing and account numbers in the remaining information constitute actual account numbers, the county must withhold them under section 552.136 of the Government Code. The county 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, 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 659065

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)