



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 30, 2017

Mr. Sam Elsass  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2017-11653

Dear Mr. Elsass:

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# 659636 (PIR Nos. 17-1837 and 17-2465).

The Department of Public Safety (the "department") received two requests from different requestors for three categories of information related to a specified solicitation. Although the department takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of BDO USA, LLP ("BDO"), CohnReznick, LLP ("CR"), Deloitte & Touche, LLP ("D&T"), Ernst & Young ("E&Y"), Grant Thornton, LLP ("GT"), Horne, LLP ("Horne"), Locke Lord, LLP ("LL"), and Weaver and Tidwell, LLP ("W&T"). Accordingly, the department states, and provides documentation showing, it notified these third parties 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 received comments from Horne and E&Y. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the department has only submitted information responsive to two categories of the requests. To the extent any additional information responsive to these requests existed and was maintained by the department on the date the department received the requests, we assume the department has released it. If the department has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 BDO, CR, D&T, GT, LL, or W&T, explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of these third parties have 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest BDO, CR, D&T, GT, LL, or W&T may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 839 (Tex. 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 841. E&Y and Horne state they have competitors. E&Y states release of the information it has indicated will allow competitors to replicate its practice. In addition, Horne states release of the information it has indicated would cause severe harm to the firm in future competitive bidding situations. After review of the information at issue and consideration of the arguments, we find E&Y and Horne have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information we have indicated under section 552.104(a) of the Government Code.<sup>1</sup>

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>2</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. Upon review, we find the department must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of

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<sup>1</sup>As our ruling is dispositive to the information at issue, we do not address the remaining arguments against disclosure of this information.

<sup>2</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).

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 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, the department may withhold the information we have indicated under section 552.104(a) of the Government Code. The department must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The department must release the remaining information; however, any information subject to copyright may be released only 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](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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/sb

Ref: ID# 659636

Enc. Submitted documents

c: 2 Requestors  
- (w/o enclosures)

7 Third Parties  
(w/o enclosures)