



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2017

Ms. Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

OR2017-22050

Dear Ms. Worman:

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# 677177 (TREC ID #20170711.3).

The Texas Real Estate Commission (the "commission") received a request for certain information pertaining to HWAT, Inc. d/b/a/ Choice Home Warranty ("HWAT"), including annual reports filed during a defined time period. You state the commission has released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.136, 552.137, and 552.147 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of HWAT. Accordingly, you state, and provide documentation showing, you notified HWAT of the request for information and of its 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 submitted arguments 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.

Initially, we note the requestor asks the commission to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the commission has made a good-faith effort to do so.

Next, we note some of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-19479 (2016). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, the commission must continue to rely on Open Records Letter No. 2016-19479 as a previous determination and withhold or release the identical information at issue 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested information is not subject to the previous ruling, we will consider the submitted arguments against disclosure of the information at issue.

We also 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) of the Government Code 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 HWAT explaining why the submitted information should not be released. Therefore, we have no basis to conclude HWAT 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 commission may not withhold the submitted information on the basis of any proprietary interest HWAT may have in it.

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 made confidential by chapter 1303 of the Occupations Code. Subchapter E of chapter 1303 governs the general powers and

duties of residential service companies. Section 1303.202 pertains to annual reports residential service companies must file and reads in relevant part the following:

(a) Not later than April 1 of each year, each residential service company shall file with the commission a report covering the preceding calendar year.

(b) The report must:

...

(3) include:

(A) a financial statement of the residential service company, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(B) any material change to the information submitted under Section 1303.103;

(C) the number of residential service contracts entered into during the year, the number of contract holders as of the end of the year, and the number of contracts terminating during the year; and

(D) any other information that:

(i) relates to the performance and solvency of the residential service company; and

(ii) is necessary for the commission to perform its duties under [chapter 1303].

(c) Information provided by a residential service company under Subsection (b)(3)(D) is:

(1) confidential; and

(2) for the exclusive use of the commission.

Occ. Code § 1303.202(a), (b)(3), (c). You inform us the commission's annual report form requests significant information beyond that required by subsections 1303.202(b)(3)(A), (B), and (C). You also state the information you have marked under section 1303.202(c) relates

to the performance and solvency of HWAT, a residential service company, and is necessary for the commission to perform its duties under chapter 1303. Based on your representations and our review, we find the information you have marked was submitted in an annual report pursuant to section 1303.202(b)(3)(D) and is confidential under section 1303.202(c). Accordingly, the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1303.202(c) of the Occupations Code.

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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the commission must withhold all bank account numbers within the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address that a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the e-mail address within the remaining information falls within the scope of section 552.137(c). Consequently, the commission may not withhold the e-mail address at issue under section 552.137.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147(a). Upon review, we find you have failed to demonstrate section 552.147 is applicable to any portion of the remaining information. Consequently, the commission may not withhold the remaining information under section 552.147.

In summary, the commission must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1303.202(c) of the Occupations Code. The commission must withhold all bank account numbers within the remaining information under section 552.136 of the Government Code. The commission 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, 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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 677177

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)