



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Mr. Mark Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196

OR2020-18959

Dear Mr. Kratovil:

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# 837720.

The Tarrant County Purchasing Department (the "department") received a request for information pertaining to request for proposals number 2020-094 for Annual Contract for Electronic Monitoring. You state the department released some information to the requestor. 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 American Justice Solutions, Inc. dba Corrective Solutions; Recovery Monitoring Solutions Corporation dba Recovery Healthcare Corporation ("RMS"); and Sentinel Offender Services, LLC. Accordingly, you state, and provide documentation showing, the department 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 RMS. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the department may not withhold the submitted information on the basis of any proprietary interest the remaining notified third parties may have in it.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Upon review, we find RMS has demonstrated its customer information constitutes trade secrets. Accordingly, to the extent RMS's customer information is not publicly available on RMS's website, the department must withhold it under section 552.110(b) of the Government Code. However, we find RMS has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the department may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

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.” *Id.* § 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. Open Records Decision No. 684 (2009). Accordingly, the department must withhold all insurance policy numbers under section 552.136 of the Government Code.

We note some of the remaining information 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 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, to the extent RMS's customer information is not publicly available on RMS's website, the department must withhold it under section 552.110(b) of the Government Code. The department must withhold all insurance policy numbers under section 552.136 of the Government Code. The department must release the remaining information; however, the department may only release information subject to copyright 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/mo

Ref: ID# 837720

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)