



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 22, 2003

Ms. Patrice Fogarty, TRMC
City Secretary
City of Missouri City
1522 Texas parkway
Missouri City, Texas 77489

OR2003-3457

Dear Ms. Fogarty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181541.

The City of Missouri City (the "city") received a request for eleven categories of information concerning a specified period of time and pertaining to a contract to collect court fines and fees. Although the city does not take a position with regard to the release of the submitted information, the city claims that the information may be subject to third party confidentiality claims. Pursuant to section 552.305(d) of the Government Code, the city notified four interested third parties, Municipal Services Bureau; American Caging, Inc.; Perdue, Brandon, Fielder, Collins & Mott, L.L.P.; and Linebarger Goggan Blair & Sampson, L.L.P. of the city's receipt of the request and each entity's right to submit arguments to this office as to why information relating to each entity should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have reviewed the submitted information.

Initially, we presume that the city has already provided the requestor with any other responsive information that the city maintains to the extent that it exists other than the information that the city has submitted to us for our review. If not, the city must do so at this

time. See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that 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 requested information relating to that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the four parties that were notified by the city of the city's receipt of the request has submitted comments to this office explaining why any portion of the requested information pertaining to that party should not be released to the requestor. Therefore, we have no basis to conclude that the release of any portion of the submitted information would implicate any third party's proprietary interests. See Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the city may not withhold any portion of the submitted information on the basis of any third party proprietary interest.

However, we note that the submitted information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Section 552.137 requires the city to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the city, unless the members of the public with whom they are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. Accordingly, we conclude that the city must withhold the e-mail addresses that we have marked pursuant to section 552.137, unless the members of the public with whom they are associated have affirmatively consented to their release.

In summary, the city must withhold the e-mail addresses that we have marked pursuant to section 552.137, unless the members of the public with whom they are associated have affirmatively consented to their release. The city must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 181541

Enc. Marked documents

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