



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2005

Mr. John T. Patterson
Assistant City Attorney
City of Waco
P. O. Box 2570
Waco, Texas 76702-2570

OR2005-06620

Dear Mr. Patterson:

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# 228897.

The City of Waco (the "city") received a request for information provided by Grande Communications Clear Source, Inc. ("Grande") regarding franchise fees paid for the last quarter of 2003. You claim that a portion of the requested information is excepted from disclosure under section 552.136 of the Government Code. You also indicate that you have notified Grande of this request for information and its opportunity to submit comments to this office. *See Gov't Code § 552.305(d)*; Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your arguments.

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, Grande has not submitted to this office any reasons explaining why its information should not be released. We thus have no basis for concluding that any portion of the requested information constitutes proprietary information, and none of it may be withheld on that basis. *See, e.g., Gov't Code § 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 (1990).

However, you note that the submitted information contains bank account numbers. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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. The city must, therefore, withhold the bank account numbers we have marked under section 552.136. The remaining information must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 228897

Enc. Submitted documents

c: Robert Waldrop
Chief Appraiser
McLennan County Appraisal District
P. O. Box 2297
Waco, Texas 76703
(w/o enclosures)