



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2007

Mr. Nathan Barrow  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2007-09504

Dear Mr. Barrow:

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# 284670.

The City of Fort Worth (the "city") received a request for any information which indicates potential environmental concerns at a specified facility. You make no arguments and take no position as to whether the requested information is excepted from disclosure. Instead, you state that release of the requested information may implicate the proprietary interests of Four Seasons/MaxAir Facility ("Four Seasons/MaxAir"). Pursuant to section 552.305 of the Government Code, you have notified Four Seasons/MaxAir of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have reviewed the submitted information.

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 Four Seasons/MaxAir explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the requested information constitutes proprietary information protected under section 552.110. *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, none of the submitted information may be withheld based on the proprietary interest of Four Seasons/MaxAir.

We note, however, that the submitted information contains information that is protected under sections 552.130 and 552.136 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. We have marked a Texas driver's license number that must be withheld under section 552.130.

We note that the remaining information includes 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." *Id.* § 552.136. We have marked bank account numbers that the city must withhold in accordance with section 552.136.

Finally, we note that some of the submitted information bears notice of copyright protection. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Attorney General Opinion JM-672 (1987)*. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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. *See Open Records Decision No. 550 (1990)*.

In summary, the city must withhold the Texas driver's license number that we have marked under section 552.130 of the Government Code and the bank account numbers that we have marked under section 552.136 of the Government Code. The city must release the remaining information. In releasing information protected by copyright, the city must comply with copyright law.

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

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<sup>1</sup>Unlike other exceptions to disclosure, this office will raise sections 552.130 and 552.136 on behalf of a governmental body, as they are mandatory exceptions to disclosure and may not be waived. *See* Gov't Code §§ 552.007, .352; *Open Records Decision No. 674 at 3 n.4 (2001)*.

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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/mcf

Ref: ID# 284670

Enc. Submitted documents

c: Mr. Chris Sandwell  
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Four Seasons/MaxAir Facility  
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Fort Worth, Texas 76140  
(w/o enclosures)