



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2008

Ms. Alexis M. Goldate
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2008-12628

Dear Ms. Goldate:

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# 321709.

The City of Corpus Christi (the "city") received a request for information relating to outside building code reviewers and consultants used by the city. You state that you have provided the requestor with some responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.130, 552.136, and 552.137 of the Government Code, as well as copyright law.¹ You state further that release of some of the submitted information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305 of the Government Code, you have notified Richard Wright Architects, Urban Engineering, Verizon Legal Compliance, and HEB Facility Delivery of this request and of each company's right to submit arguments to this office as to why its requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

¹We note that in your letter dated July 14, 2008, you have withdrawn your remaining assertions under the Act.

Initially, 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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received any arguments from any of the notified third parties. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information of these companies, and the city may not withhold any portion of the submitted information on that basis. *See* 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).

Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the city must withhold the Texas-issued driver's license numbers you have marked pursuant to section 552.130 of the Government Code.

Section 552.136 provides the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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 agree that the insurance policy and credit card account numbers you have marked constitute "access devices" for purposes of section 552.136, and these numbers must be withheld under this exception. *See id.* § 552.136(a)(1). You also seek to withhold an internal city account number under section 552.136(a)(2) and explain in detail how this number, which you have marked, may be used to initiate the transfer of funds from one city account to another. The legislative history of section 552.136 states that this statute was enacted in order to prevent fraud by preventing disclosure of credit card and debit card numbers of organizations to unauthorized persons. *See* House Comm. On State Affairs, Bill

Analysis, Tex. Comm. Substitute S.B. 694, 77th Leg., R.S. (2001). In this instance, you explain that, by using unique city accounting software, the internal account number you have marked may be used to transfer funds from one city account to another. However, you do not explain how this number, when released to the public, can be used to fraudulently obtain city funds from a city bank account. Therefore, based upon your representations and our review, we find that you have failed to establish the applicability of section 552.136(a)(2) to the internal city account number you have marked. As no other exceptions are raised with regard to this number, it must be released to the requestor.

You have identified e-mail addresses within the submitted documents that you argue are subject to section 552.137 of the Government Code. This section 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). You state that the marked e-mail addresses are not specifically excluded by section 552.137(c). You also state that the city has not received consent for the release of these e-mail addresses. Therefore, the city must withhold the e-mail addresses you marked under section 552.137.

You state that a portion of the submitted information is 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. 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). Thus, any copyrighted information may only be released in accordance with copyright law.

In summary, except for the internal city account number we have marked for release, the city must withhold the information you have marked under sections 552.130, 552.136, and 552.137 of the Government Code. The remaining information must be released to the requestor, but any copyrighted information may only be released in accordance 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 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 321709

Enc. Submitted documents

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