



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2008

Ms. Marianna M. McGowan
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2008-14406

Dear Ms. McGowan:

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# 325349.

The City of Frisco (the "city"), which you represent, received a request for information relating to the city's purchase of a webcasting solution. You take no position on the public availability of the requested information. You believe, however, that this request for information may implicate the interests of third parties. You notified the interested parties of the request for information and of their right to submit arguments to this office as to why the information should not be released.¹ We have reviewed the information you submitted.

We first note that some of the submitted information is related to a contract for commercial construction waste services. That information, which we have marked, is not responsive to this request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

We next note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be

¹See 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).

released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from any of the third parties that were notified.² Therefore, because none of those parties has demonstrated that any of the information at issue is proprietary for the purposes of the Act, the city may not withhold any of the submitted information on the basis of any proprietary interests of the third parties. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

We note that some of the submitted information is confidential under section 552.136 of the Government Code.³ Section 552.136(b) states that “[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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We have marked insurance policy numbers that the city must withhold under section 552.136.

We also note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990).

In summary, the city must withhold the marked insurance policy numbers under section 552.136 of the Government Code. The rest of the responsive information must be released. Any information that is protected by copyright must 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

²You inform us that the parties who received notice under section 552.305 are Daystar Computer Systems, Inc.; Enterprise Informatics, Inc.; IQM2; ISPA, Inc.; MCCi; Sire Technologies, Inc.; Southwest Solutions Group; and Zasio Enterprises, Inc.

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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).

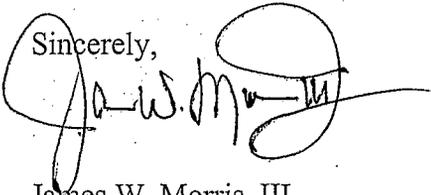
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 325349

Enc: Submitted documents

c: Mr. Chavin Muniz
Granicus, Inc.
568 Howard Street Suite 300
San Francisco, California 94105
(w/o enclosures)

Daystar Computer Systems, Inc.
600 West Jackson Boulevard Suite 580
Chicago, Illinois 60661
(w/o enclosures)

Enterprise Informatics, Inc.
10052 Mesa Ridge Court Suite 100
San Diego, California 92121
(w/o enclosures)

IQM2
Intelligent Meeting Management
1650 Sycamore Avenue Suite 40
Behemia, New York 11716
(w/o enclosures)

ISPA
DocMaestro Products Division
2240 Belleair Road #230
Clearwater, Florida 33764
(w/o enclosures)

MCCi
1700 Capital Circle South West
Tallahassee, Florida 32310
(w/o enclosures)

Sire Technologies, Inc.
3676 West California Avenue
Salt Lake City, Utah 84104
(w/o enclosures)

Southwest Solutions Group
4355 Excel Parkway Suite 300
Addison, Texas 75001
(w/o enclosures)

Zasio Enterprises Inc.
12601 West Explorer Drive Suite 250
Boise, Idaho 83713
(w/o enclosures)