



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 1, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-05768

Dear Mr. Phillips:

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# 341493 (City of Fort Worth PIR No. 1984-09)

The City of Fort Worth (the "city") received a request for contracts and proposals related to Skire, Inc. ("Skire"). You state you have released some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.136 and 552.137 of the Government Code.¹ You also state that release of some of the submitted information may implicate the proprietary interests of Skire. You notified Skire of the request and of its right to submit arguments to this office as to why its 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); Open Records Decision No. 542 (1990) (statutory predecessor to section 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 the exceptions you claim and have reviewed the submitted information.

¹We note that the city has redacted some of the submitted information. As we are able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from public disclosure. In the future, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

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 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 Skire explaining why the submitted information should not be released. Therefore, Skire has not provided us with any basis to conclude that it has protected proprietary interests in the submitted information. *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 the city may not withhold any of the submitted information based upon the proprietary interests of Skire.

Section 552.136 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(b). The city must withhold the insurance policy numbers you have marked, in addition to the insurance policy numbers we have marked, under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, 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.

...

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent; [or]

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]

Gov't Code § 552.137. Because the e-mail addresses at issue fall within the scope of section 552.137(c), the city may not withhold them under section 552.137(a).

We note that some of the submitted information appears to be 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).

In summary, the city must withhold the marked insurance policy numbers under section 552.136 of the Government Code. The remaining information must be released to the requestor, but any information protected by copyright must be released in accordance with copyright law.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 341493

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Mr. Sateez Kadivar
Skire, Inc.
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Menlo Park, California 94025
(w/o enclosures)