



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2009

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2009-13976

Dear Ms. Chang:

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# 357580.

The City of Houston (the "city") received a request for all records, including proposals, scoring sheets, correspondence, and contracts, pertaining to RFP# S46-T23226 during a specified time period.¹ You state the city will provide some of the requested information to the requestor. Although you take no position with respect to the public availability of the submitted proposals, you state their release may implicate the proprietary interests of Linebarger Goggan Blair & Sampson, LLP ("LGBS") and Gila Corporation d/b/a Municipal Services Bureau ("MSB"). Accordingly, you state, and have provided documentation showing, you notified these companies of the request and of each company's right to submit arguments to this office as to why the submitted proposals should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act 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 either LGBS or MSB explaining why their submitted proposals should not be released. Therefore, we have no basis to conclude LGBS and MSB have protected proprietary interests in their

¹We note the requestor specifically excluded his company's proposal from the requested information.

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. Consequently, the city may not withhold the submitted proposals on the basis of any proprietary interests LGBS or MSB may have in the information.

We note the submitted information contains insurance policy numbers. Section 552.136 of the Government Code provides:

(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.

Gov't Code § 552.136. We conclude the insurance policy numbers we have marked constitute access device numbers for purposes of section 552.136. Thus, the city must withhold the marked insurance policy numbers under section 552.136 of the Government Code.

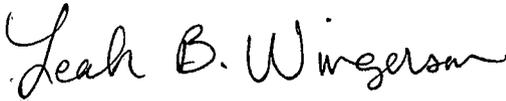
We note a portion of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection 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). Accordingly, the remaining information must be released to the requestor in accordance with copyright law.

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 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 357580

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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