



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2010

Ms. Beth Moroney
Paralegal
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2010-02832

Dear Ms. Moroney:

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# 372003 (COSA File No. 09-1573).

The City of San Antonio (the "city") received a request for information related to a specified request for proposals. You take no position with respect to the public availability of the requested information, but believe that the request may implicate the proprietary interests of third parties Gershman, Brickner & Bratton, Inc.; Institute of Information Technology, Inc.; and RouteSmart Technologies, Inc. Accordingly, you notified the companies of this request for information and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted information.

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 any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude that any of the third parties has a protected

proprietary interest 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 portion of the submitted information based upon the proprietary interests of the third parties.

We note that portions of the submitted information contain insurance policy, bank account, and bank routing numbers. Section 552.136 of the Government Code provides 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.”¹ Gov’t Code § 552.136. This office has concluded that bank account, bank routing, and insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the bank account, bank routing, and insurance policy numbers we have marked under section 552.136 of the Government Code.

Finally, we note that some of the materials at issue appear 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 protected by copyright. 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 materials protected by copyright, 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 bank account, bank routing, and insurance policy numbers we have marked under section 552.136 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 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including bank account, bank routing, and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 372003

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Robert H. Brickner
Gershman, Brickner & Bratton, Inc.
8550 Arlington Boulevard, Suite 203
Fairfax, Virginia 22031
(w/o enclosures)

Mr. Ewe-Leng Lim
Institute of Information Technology, Inc.
5910 FM 1488 Road
Magnolia, Texas 77354
(w/o enclosures)

Mr. Chris Walz
Vice President
RouteSmart Technologies, Inc.
8850 Stanford Boulevard, Suite 3250
Columbia, Maryland 21045
(w/o enclosures)