



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

Mr. James G. Nolan
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-18834

Dear Mr. Nolan:

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# 402964 (CPA ORTS# 6651346134).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information pertaining to RFP 946-A1 for State Charge Card Services. You state you have released some of the requested information. You state the submitted information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305 of the Government Code, you state you have notified JPMorgan Chase Bank, N.A. and MasterCard of the request and of each company's right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, JPMorgan Chase Bank, N.A. and MasterCard have not submitted any comments to this office explaining how release of the information at issue would affect their proprietary interests. Accordingly,

none of the information pertaining to JPMorgan Chase Bank, N.A. or MasterCard may be withheld on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

We note some of the remaining information may be subject to section 552.136 of the Government Code.¹ 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. We are unable to determine if the account numbers at issue, which we have marked, consist of sample or actual credit card account numbers. Therefore, we must rule conditionally. If the numbers we have marked are actual credit card account numbers, they must be withheld under section 552.136.² If the numbers we have marked represent samples, they may not be withheld under section 552.136 and must be released.

Lastly, we note that portions of the submitted information 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 copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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.

In summary, to the extent the information we marked consists of actual credit card account numbers, that information must be withheld under section 552.136 of the Government Code. The remaining information must be released, 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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²This office issued Open Records Decision No. 684, a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including credit card numbers under section 552.136 of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 402964

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Gary D. Hamilton
JPMorgan Chase Bank N.A.
221 West 6th Street
Austin, Texas 78701
(w/o enclosures)

Mr. Will Hawkins
MasterCard
c/o James G. Nolan
Assistant General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528
(w/o enclosures)