



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2011

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
City of Dallas  
Office of the City Attorney  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2011-03114

Dear Mr. Ernst:

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# 410380.

The City of Dallas (the "city") received a request for information pertaining to request for proposal number BHZ1009 for Mobile and Portable Communications Subscriber Equipment. You state you are releasing some of the requested information. Although you take no position on whether the submitted proposals are excepted from disclosure, you state release of this information may implicate the proprietary interests of Motorola, Inc. ("Motorola") and Harris Corporation ("Harris"). Accordingly, you have notified Motorola and Harris of the request and of their right to submit arguments to this office as to why their 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 arguments submitted by Harris and reviewed the submitted information.

Initially, you acknowledge that the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from our office. Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.--

Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the third-party arguments for this information.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from Motorola. Thus, this company has not demonstrated it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 (1990). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests Motorola may have in the information.

Next, we address Harris's argument that its submitted proposal is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. "Public information" is defined as

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We note the information at issue was collected and is maintained by the city in relation to a request for proposals issued by the city. Therefore, we conclude that the submitted proposal relates to the transaction of official business of the city, and, therefore, the information constitutes "public information." *See* Gov't Code § 552.002(a). Consequently, the city may only withhold this information from

the requestor if it is excepted from disclosure pursuant to a provision of the Act. Thus, we will address Harris's claimed exception to disclosure.

Harris argues the pricing information contained in its submitted proposal is excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999). Upon review, we find Harris has established that release of its pricing information would cause the company substantial competitive harm. Therefore, the city must withhold the information we have marked under section 552.110 of the Government Code.

We note that section 552.130 of the Government Code is applicable to some of the remaining information.<sup>1</sup> Section 552.130 provides information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130 (a)(2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We also note that some of the remaining information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136(b) provides 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device for purposes of section 552.136. We have marked insurance policy numbers that must be withheld under section 552.136 of the Government Code.

In summary, the city must withhold (1) the information we have marked under section 552.110 of the Government Code, (2) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, and (3) insurance policy numbers we have marked under section 552.136 of the Government Code.<sup>2</sup> The remaining information must be released to the requestor.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note this office issued Open Record Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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](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# 410380

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

cc: Mr. Edward Fuerst  
Motorola, Inc.  
1507 LBJ Freeway, Suite 700  
Farmers Branch, Texas 75234  
(w/o enclosures)

Mr. Justin A. Hoover  
Winstead  
1201 Elm Street  
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