



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2011

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
City of Dallas
City Hall
Dallas, Texas 75201

OR2011-12055

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# 427504.

The City of Dallas (the "city") received a request for two specified applications for bond financing submitted to the Dallas Housing Finance Corporation for the Atmos Redevelopment Project. You indicate you will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Hamilton Properties Corporation ("Hamilton"). Accordingly, you state you notified Hamilton of the request for information and of its right to submit arguments to this office as to why the submitted 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 reviewed the submitted information. We have also considered comments submitted from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city did not comply with the requirements of section 552.301 of the Government Code in requesting a decision from this office. Section 552.301 prescribes the procedural obligations that a governmental body must

follow in asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). You state the city received the request on May 31, 2011. Accordingly, the ten-business-day deadline was June 14, 2011. The requestor states he received a June 7, 2011 letter from the city that did not reference the city's wishes to withhold any of the requested information. However, the requestor acknowledges the city sent him a letter on June 14, 2011, which we note meets the requirements of section 552.301(d). Therefore, we conclude the city complied with the procedural requirements of section 552.301(d).

Next, 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Hamilton. We, thus, have no basis for concluding that any portion of the submitted information constitutes Hamilton's proprietary 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 on the proprietary interests of Hamilton.

The submitted documents include information that is subject to section 552.136 of the Government Code.¹ Section 552.136 provides, "[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." Gov't Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.² As no further exceptions to disclosure have been raised, the remaining information must be released.

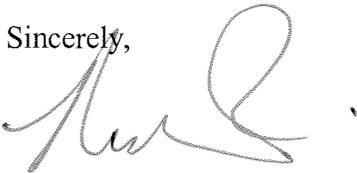
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 427504

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Lawrence E. Hamilton
CEO
Hamilton Properties Corporation
1310 Elm Street, Suite 140
Dallas, Texas 75202
(w/o enclosures)