



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2011

Mr. Tyler F. Wallach  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2011-13655

Dear Mr. Wallach:

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# 430824 (PIR No. W010051).

The City of Fort Worth (the "city") received a request for responses to RFP 10-0536 Meter Reading Services and the evaluations of those responses. You state you have released some information to the requestor. You state you have redacted insurance policy numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> Although you take no position on the public availability of the remaining information, you state the information at issue may implicate the interests of third parties. Accordingly, you state, and submit documentation showing, you notified AMS Utiliserv;

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including access device numbers under section 552.136, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(d), (e)). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

Bermex, Inc.; Corix Utilities (US), Inc.; Trace Services, L.P.; U.S. Metering and Technology, Inc.; Utility Partners of America; and Water Alternative Natural Gas I of the request for information and of their right to submit arguments to this office as to why their submitted 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 reviewed the submitted information.

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, none of the third parties has submitted any comments to this office explaining how release of the submitted information would affect its proprietary interests. Therefore, we have no basis to conclude any of these companies have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret). Accordingly, the city may not withhold any portion of the submitted information based upon the proprietary interests of the third parties.

We note some of the submitted information may 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. As you raise no exceptions to disclosure, the city must release the submitted information, but any information protected by copyright 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.

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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 430824

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Mark Miller  
Utility Partners of America  
7600 Pelham Road  
Greenville, South Carolina 29615  
(w/o enclosures)

Mr. Henry Mello  
Bermex, Inc.  
37244 Groesbeck Highway, Suite A  
Clinton Township, Michigan 48036  
(w/o enclosures)

Mr. Michael Lunau  
AMSUtiliserv  
3124 Kilpatrick Boulevard  
Monroe, Louisiana 71201  
(w/o enclosures)

Ms. Amy Collins  
U.S. Metering and Technology, Inc.  
4146 West Highway 79  
Rockdale, Texas 76567  
(w/o enclosures)

Ms. Helen Humphreys  
Trace Services, LP  
230 Stanton Avenue  
Pittsburgh, Pennsylvania 15209  
(w/o enclosures)

Mr. Neil Auen  
Corix Utilities (US), Inc.  
126 North Jefferson, Suite 300  
Milwaukee, Wisconsin 53202  
(w/o enclosures)

Water Alternative Natural Gas I  
16770 Hedgecroft Drive, Suite 714  
Houston, Texas 77060  
(w/o enclosures)