



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2011

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

OR2011-17349

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# 437086 (Fort Worth PIR No. W011448).

The City of Fort Worth (the "city") received a request for submissions in response to Request for Qualifications- Project DEM 10-06. You state most of the requested information is subject to a previous Open Records Letter Ruling. We understand you to claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code. Although you take no position as to whether the remaining submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Camp Dresser & McKee, Inc. ("CDM"). Accordingly, you state, and provide documentation showing, you notified CDM of the request for information and of its right to submit arguments to this office as to why its 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 considered the claimed exception and reviewed the submitted information.

Initially, you inform us most of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-17940 (2010). In that ruling, we concluded the city must withhold certain information under sections 552.110(a) and 552.110(b) of the Government Code, and the remaining information must be released in accordance with copyright law. You state the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, the city must continue to rely on Open Records Letter No. 2010-17940 as a previous determination and withhold or release the information at issue in accordance with

that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you state the submitted information was not the subject of the prior ruling. Accordingly, we will address your argument against disclosure of the submitted information.

Next, we note, and you acknowledge, the city has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. *See* 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 procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.301; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by law or affects third party interests. *See* Open Records Decision No. 150 (1977). However, we note section 552.136 of the Government Code constitutes a compelling reason to withhold information and a third party's interests are at stake. Therefore, we will determine whether any of the submitted information must be withheld under the Act.

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 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 CDM explaining why its information should not be released. Therefore, we have no basis to conclude CDM 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 of the information at issue on the basis of any proprietary interest CDM may have in it.

You state the city will redact the marked insurance policy numbers pursuant to Open Records Decision No. 684 (2009). That decision 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. However, as of September 1, 2011, the Texas legislature

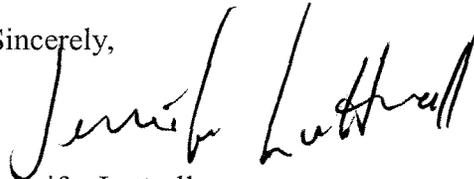
amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Act of May 30, 2011, 82nd 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 superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsection 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684. Section 552.136 of the Government Code 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. This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, we find the city must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2010-17940 as a previous determination and withhold or release the information at issue in accordance with that ruling. The city must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code. The remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 437086

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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