



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2012

Mr. Jason D. King
Akers, Boulware-Wells, L.L.P.
For the City of Marble Falls
6618 Sitio Del Reo Boulevard, Building E, Suite 102
Austin, Texas 78730

OR2012-07310

Dear Mr. King:

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# 454115.

The City of Marble Falls (the "city"), which you represent, received a request for the top five proposals submitted for the city's sports complex project. Although you take no position on whether the requested information is excepted from disclosure, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the requests for information and of their right to submit arguments stating why their information should not be released.¹ *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 submitted information.

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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from any of the third parties explaining why their information should not be released to the requestor. Thus, we have no basis to conclude that the release of any of the information at issue would implicate the interests of the third parties. *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

¹The third parties notified pursuant to section 552.305 are: Baker Aicklen and Associates; David McCaskill Design Group; Dunkin Sims Stoffels, Inc.; Half Associates, Inc.; and Schrickel, Rollins, and Associates, Inc.

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, we conclude that the city may not withhold any of the information on the basis of any interest the third parties may have in the information

We note the submitted information includes insurance policy numbers that are subject to section 552.136 of the Government Code.² 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). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* (defining “access device”). Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. As no other exceptions to disclosure are raised, the city must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 454115

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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