



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2012

Mr. Lawrence G. Provins
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR2012-17019

Dear Mr. Provins:

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# 468879.

The City of Pearland (the "city") received a request for the "scoring" notes and forms from the evaluation committee along with the winning bid and other bids that made the "final interview process" pertaining to RFP #0512-39, and two subsequent requests from different individuals for the winning bids pertaining to this RFP. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Digitech Computer, Inc ("Digitech"). Accordingly, you inform us you notified Digitech 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 Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have not submitted the scoring notes, forms, or other bids that made the final interview process pertaining to RFP #0512-39 sought by the first requestor. To the extent the city maintains information responsive to these parts of the first requestor's request

that existed on the date it was received, we assume the city has released this information to the first requestor. If the city has not released any such information to the first requestor, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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) 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, Digitech has not submitted comments to this office explaining why the submitted information should not be released. Therefore, we have no basis to conclude Digitech has a protected proprietary interest in this 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 upon the proprietary interests of Digitech.

We note portions of the submitted information are subject to section 552.136 of the Government Code, which provides in part 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."¹ Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined that insurance policy numbers are subject to section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. As no exceptions to disclosure are raised for the remaining information, the city must release it.

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

¹The 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).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 468879

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

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Suite 100 North
555 Pleasantville Road
Briarcliff Manor, New York 10510
(w/o enclosures)