



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2012

Ms. Elaine Nicholson  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2012-17565

Dear Ms. Nicholson:

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# 469826.

The City of Austin (the "city") received a request for a copy of the financial package that was provided monthly to the city by Aramark Fhc, L.L.C. ("Aramark"). Although the city takes no position regarding whether the submitted information is excepted from disclosure, you state release of the requested information may implicate the proprietary interests of Aramark.<sup>1</sup> Accordingly, you provide documentation showing you have notified Aramark of the request and its right to submit arguments to this office. *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.

Initially, we note, and you acknowledge, the city failed to meet the statutory deadlines imposed by section 552.301 of the Government Code. *See id.* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested

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<sup>1</sup>Although you raise section 552.101 of the Government Code for portions of the submitted information, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third-party interests and section 552.136 of the Government Code can provide compelling reasons to overcome this presumption, we will consider whether the information at issue is excepted from disclosure under the Act.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Aramark. Thus, Aramark has not demonstrated it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); 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 the submitted information on the basis of any proprietary interest Aramark may have in the information.

We note some of the submitted information is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 provides “[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(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a). Accordingly, the city must withhold the account numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the account numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.

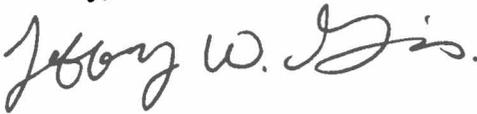
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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 469826

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Angela Alexander  
Controller  
ARAMARK  
500 East Cesar Chavez  
Austin, Texas 78701  
(w/o enclosures)