



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

November 26, 2012

Mr. David H. Guerra  
For City of Mission  
King, Guerra, Davis & Garcia, P.C.  
P.O. Box 1025  
Mission, Texas 78573-0017

OR2012-18855

Dear Mr. Guerra:

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# 472371.

The City of Mission (the "city"), which you represent, received a request for the proposal submitted by KellyAmerit Services, Inc. ("KellyAmerit") in response to RFP # 12-248-08-110. Although you take no position on the public availability of the requested information, you state the requested information may implicate the proprietary interests of KellyAmerit. Accordingly, you inform us, and provide documentation showing, you notified KellyAmerit of the request and of the company's right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from an attorney for KellyAmerit. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted a portion of the requested proposal. To the extent the remainder of the requested information existed on the date the city received the request, we assume you have released it. *See* 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). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.110(b) of the Government Code protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 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).

KellyAmerit contends some of the submitted information, including the company’s financial statements and insurance certificate, is commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find KellyAmerit has made only conclusory allegations that the release of any of its information would result in substantial harm to its competitive position. *See* ORD 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, the city may not withhold any of the submitted information under section 552.110(b) of the Government Code.

We note some of the submitted information is subject to section 552.136(b) of the Government Code, which states “[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.”<sup>1</sup> Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device for purposes of section 552.136. Therefore, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We also note some of the information at issue 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.

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<sup>1</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).

In summary, the city must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released; however, any information subject to 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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 472371

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

KellyAmerit Fleet Services, Inc.  
c/o Ms. Heather M. Sager  
Drinker, Biddle & Reath, L.L.P.  
50 Fremont Street  
San Francisco, California 94105  
(w/o enclosures)