



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2012

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79408-2000

OR2012-19518

Dear Ms. Sims:

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# 473090.

The City of Lubbock (the "city") received a request for copies of all proposals submitted in response to RFP-12-10502-CI. You claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Al-jon Manufacturing, Yellowhouse Machinery Company, and Warren CAT (collectively, the "third parties"). Accordingly, you notified these third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have reviewed the submitted information.

We note 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 decision, we have not received correspondence from any of the third parties. Therefore,

we have no basis to conclude these third parties have protected proprietary interests in 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 interests these third parties may have in the information.

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) (defining “access device”). You state the submitted information contains account numbers that are subject to section 552.136 of the Government Code. However, upon review, we find the responsive information does not contain any account numbers or any other information subject to section 552.136 of the Government Code. Accordingly, the city may not withhold any portion of the submitted information on the basis of section 552.136 of the Government Code.

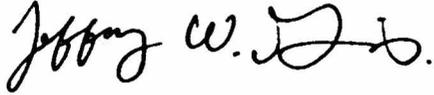
We note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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. Accordingly, the submitted information must be released, but 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, 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# 473090

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Al-jon Manufacturing
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Ottumwa, Iowa 52501
(w/o enclosures)

Mr. Howard Garlington
Yellowhouse Machinery
3405 East Slaton Road
Lubbock, Texas 79404
(w/o enclosures)

Mr. Koley Schaffner
Warren CAT
702 East Slaton Road
Lubbock, Texas 79404
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