



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2012

Ms. Danielle R. Folsom  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77002-0368

OR2012-19523

Dear Ms. Folsom:

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# 473081 (HGC# 20024).

The City of Houston (the "city") received a request for all responses, other than the requestor's, to RFP S44-T24248 for Live Homework Assistance for the Houston Public Library Department. You state some of the requested information will be released to the requestor. Although you take no position on the public availability of the submitted information, you state the submitted information may implicate the proprietary interests of Brainfuse, Inc. ("Brainfuse"). Accordingly, you inform us, and provide documentation showing, you notified Brainfuse of the request and of the company's right to submit comments to this office as to why the submitted 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 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 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, we have not received comments from

Brainfuse on why the company's submitted information should not be released. Therefore, we have no basis to conclude Brainfuse has protected proprietary interests in the submitted 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 portion of the submitted information on the basis of any proprietary interest Brainfuse may have in it.

Section 552.136(b) of the Government Code 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). We have marked an account number which the city must withhold under section 552.136 of the Government Code. As no further exceptions to disclosure have been raised, the remaining information must be released.

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

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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).

Ref: ID# 473081

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Troy Weiman  
Director of Services  
Brainfuse, Inc.  
271 Madison Avenue  
New York, New York 10016  
(w/o enclosures)