ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2013

Ms. L. Carolyn Nivens
Paralegal
Counsel for the City of League City
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2013-00108

Dear Ms. Nivens:

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# 475120 (City Ref. No. 12-354).

The City of League City (the "city"), which you represent, received a request for certain information relating to a specified request for proposals. You state the city does not have responsive information for a portion of the request.[1] You further inform us the city has released a portion of the requested information. You claim the submitted information is excepted from disclosure under sections 552.117, 552.130, 552.136, and 552.137 of the Government Code.[2] You also state release of the submitted information may implicate the

[1]The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.–San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

[2]Although you also initially raised sections 552.101, 552.104, and 552.110 of the Government Code, you subsequently informed this office that you are no longer asserting these exceptions to disclosure. Accordingly, we do not address your arguments concerning the applicability of these sections. We additionally note that you raise section 552.352 of the Government Code as an exception to disclosure. Section 552.352 states in relevant part that "[a] person commits an offense if the person distributes information considered confidential under the terms of [chapter 552]." Gov't Code § 552.352(a). Thus, section 552.352 is not an exception to disclosure under the Act. Rather, section 552.352 is a procedural provision that sets forth criminal penalties for the distribution of confidential information.

proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Ameriwaste of Texas, L.L.C.; Nexus Disposal, Progressive Waste Services; Republic Services; Waste Connection of Texas; and Waste Management of Texas, Inc. of the request for information and of their 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 the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it was created after the city received the request. This ruling does not address the public availability of non-responsive information, and the city need not release such information to the requestor.

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, we have not received comments from any of the third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the third parties has a protected proprietary interest 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 of the information at issue on the basis of any proprietary interest any of the third parties may have in it.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to

section 552.024, and the cellular telephone service is not paid for by a governmental body, the city must withhold the cellular telephone number you have marked under section 552.117(a)(1) of the Government Code. However, the city may not withhold the marked information under section 552.117(a)(1) if the individual did not make a timely election to keep the information confidential or if the cellular telephone service is paid for by a governmental body.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. You indicate you will redact motor vehicle record information as permitted by section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009). Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See id.* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. *See* ORD 684. However, we note any other information made confidential by section 552.130(a)(2) is not subject to section 552.130(c) or Open Records Decision No. 684 and therefore may not be withheld without requesting a decision from this office. Accordingly, the city must withhold the vehicle identification numbers you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code states 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." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a) (defining access device). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. Although you seek to withhold additional information, including tax identification numbers, under section 552.136, you have not submitted any arguments explaining how the information you have marked constitutes an access device number for the purposes of section 552.136. Accordingly, the city may not withhold any of the remaining information you seek to withhold under section 552.136 of the Government Code.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). We note this exception is not applicable to an e-mail address "contained in a response to a request for bids or proposals[.]" *Id.* § 552.137(c)(3). Some of the e-mail addresses you have marked are subject to section 552.137(c)(3), and the city may not withhold these addresses, which we have marked for release. Accordingly, with the exception of the e-mail addresses we have marked for release, the city must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.

We note some of the submitted information 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.

In summary, the city must withhold the cellular telephone number you have marked under section 552.117(a)(1) of the Government Code, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 and the cellular telephone service is not paid for by a governmental body. The city must withhold the vehicle identification numbers you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. With the exception of the e-mail addresses we have marked for release, the city must withhold the e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The remaining responsive 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,

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 475120

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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