



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2013

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

OR2013-00505

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# 475579 (GC No. 20106).

The City of Houston (the "city") received a request for information pertaining to solicitation #S17-T24178. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified Simplikate; SeeClickFix, Inc. ("SeeClickFix"); Connected Bits, L.L.C.; Lagan; and Idea Integration Corporation of the request for information and of their rights 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 received comments from SeeClickFix. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note SeeClickFix's submitted information is the subject of a previous ruling issued by this office. In Open Records Letter No. 2013-00208 (2013), this office determined the city (1) must withhold the information we marked under section 552.101 of the

Government Code in conjunction with section 6103(a) of title 26 of the United States Code, (2) must withhold the insurance policy numbers we marked under section 552.136 of the Government Code, and (3) must release the remaining information at issue. As we have no indication the law, facts, and circumstances upon which the previous ruling was based have changed, we determine the city must continue to rely on our ruling in Open Records Letter No. 2013-00208 as a previous determination and withhold or release SeeClickFix's submitted information in accordance with that decision.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note that 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 only received comments from SeeClickFix. Thus, we find the remaining third parties have not demonstrated that they have any 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 any of the remaining third parties' information on the basis of any proprietary interests they may have in the information.

Section 552.136 of the Government Code provides in part 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."² *See* Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined that insurance policy numbers are subject to section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

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

¹As we are able to make this determination, we need not address SeeClickFix's arguments against disclosure of this information.

²The 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).

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 continue to rely on our ruling in Open Records Letter No. 2013-00208 as a previous determination and withhold or release SeeClickFix's submitted information in accordance with that decision. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information; however, any information subject to copyright only may 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 475579

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Director of Finance and Operations
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(w/o enclosures)

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