



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 29, 2013

Ms. Donna L. Johnson  
Counsel for City of Dickinson  
Olson & Olson, L.L.P.  
2727 Allen Parkway, Suite 600  
Houston, Texas 77019

OR2013-08905

Dear Ms. Johnson:

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# 488567 (PIR No. COD13-002).

The City of Dickinson (the "city"), which you represent, received a request for "Connect CTY electronic database including names, addresses, and phone numbers of [city] residents." You state the city will redact personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the remaining requested information is excepted from disclosure under sections 552.110 and 552.117 of the Government Code and protected by copyright law. You also state release of the submitted information may implicate the proprietary interests of Blackboard, Inc. ("Blackboard"). Accordingly, you have notified Blackboard of the request and of its 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 considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, 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) of the Government Code 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 Blackboard explaining why its information should not be released. Therefore, we have no basis to conclude Blackboard 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 Blackboard may have in it.

The city raises section 552.110 of the Government Code for portions of the submitted information. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110. We note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the city's arguments under section 552.110 of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note section 552.117 applies only to information held by a governmental body in an employment capacity. Thus, information that is not held in an employment capacity may not be withheld under section 552.117(a)(1). Upon review, we find no part of the submitted information is held by the city in an employment context. Accordingly, the city may not withhold any of the submitted information on the basis of section 552.117(a)(1) of the Government Code.

You contend the remaining 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, as the city raises no other exceptions to disclosure, the city must release the requested information; however, any information protected by 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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 488567

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Blackboard, Inc.  
650 Massachusetts Avenue NW, Sixth Floor  
Washington, D.C. 20001  
(w/o enclosures)