



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2013

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2013-14890

Dear Ms. Graham:

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# 497664.

The City of Mesquite (the "city") received a request for copies of the proposals submitted by each vendor in response to the city's request for proposals for Software and Implementation Services for Enterprise Resource Planning System. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. Additionally, although the city takes no position with respect to the remaining requested information, you state its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the city notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.¹ *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from any of the third parties explaining why their information should not be released to the requestor. Thus, we have no basis to conclude that the release of any

¹The third parties notified pursuant to section 552.305 are: Advanced Utility Systems; AMX International, Inc.; FlexSolv Networks, Inc.; New World Systems; PublicStuff, Inc.; Tyler Technologies; and USM Business Systems, Inc.

of the submitted information would implicate the interests of any of the third parties, and none of the submitted information may be withheld on that basis. *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.

We understand the city to contend portions of the submitted information should be withheld under section 552.101 of the Government Code because they are marked “confidential.” Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, the city has not pointed to any statutory confidentiality provision, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold the information at issue under section 552.101. Further, we note information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 Government Code). Consequently, unless the information at issue comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.136 of the Government Code states, in part, “Notwithstanding 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); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the city must withhold the insurance policy numbers you have marked under section 552.136.

You state the city will redact the e-mail addresses you have marked under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² Section 552.137 excepts from disclosure “an e-mail address of a member of the public that

²We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). However, section 552.137 does not except from release an e-mail address "contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]" *Id.* § 552.137(c)(3). The e-mail addresses you have marked are subject to section 552.137(c)(3). Therefore, the city may not withhold this information under section 552.137.

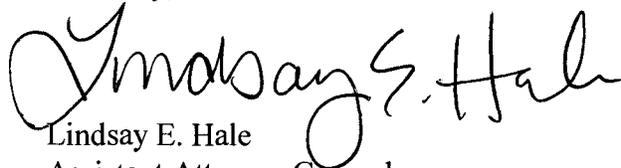
We note some of the submitted information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection 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 insurance policy numbers you have marked under section 552.136 of the Government Code. The city must release the remaining 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 497664

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Lee Midkiff
Local Government Division
Tyler Technologies
5519 53rd Street
Lubbock, Texas 79414
(w/o enclosures)

Mr. John Herron
Regional Territory Manager
New World Systems
888 West Big Beaver Road, Suite 600
Troy, Michigan 48084
(w/o enclosures)

Mr. Paquiry Loganathan
Principal - Projects
USM Business Systems, Inc.
14175 Sullyfield Circle, Suite 400
Chantilly, Virginia 20151
(w/o enclosures)

Dr. Mohammed Zamshed Ali
Principal Consultant & Founder
FlexSolv Networks Inc.
1701 North Grenville Avenue, Suite 201
Richardson, Texas 75081
(w/o enclosures)

Mr. Paul Wolf
Regional Manager
PublicStuff, Inc.
72 Allen Street, 3rd Floor
New York, New York 10002
(w/o enclosures)

Mr. Aaron Webb
Senior Solutions Manager
AMX International, Inc.
346 Grand Loop, Suite 100
Rexburg, Idaho 83440
(w/o enclosures)

Mr. Peter Fanous
Executive Vice President
Advanced Utility Systems
Suite 1400
2235 Sheppard Avenue East
Toronto, Ontario M2J 5B5
(w/o enclosures)