



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2013

Ms. Andrea D. Russell
Counsel for the City of Mansfield
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2013-22263

Dear Ms. Russell:

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# 509217.

The City of Mansfield (the "city"), which you represent, received a request for (1) all expense reports for the past two years for certain named individuals; (2) all transactions and communications related to a specified land development; (3) conflict of interest disclosures for certain named individuals; (4) all disclosures made under a previous request that were filed; (5) the policies for conflict of interest disclosures; (6) certain board and staff meeting minutes; (7) city council meeting minutes for the past year; and (8) any communication related to the new community park. You state the city has released information responsive to items three through seven. You claim a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Although you take no position with respect to the public availability of the remaining submitted information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified Dean Electric, Inc. ("Dean"); Henneberger Construction, Inc.; Pete Durant & Associates, Inc. ("Durant"); Scott Tucker Construction Company, L.L.C.; and Steele & Freeman, Inc. of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 exception you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the city received the request on August 6, 2013, and the requestor clarified the request on September 6, 2013. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You further explain the city provided the requestor with a cost estimate and a request for a deposit for payment of those charges. *See* Gov't Code §§ 552.2615(a), .263(a). You state the city received a deposit for payment of the anticipated costs on September 27, 2013. Therefore, September 27 is the date the city is deemed to have received the request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). Thus, the ten-business-day deadline for requesting a ruling and stating the applicable exceptions was October 11, 2013. Although the city requested a ruling from this office on October 11, we find it did not raise section 552.101 of the Government Code as an exception until October 17, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we conclude the city failed to meet its procedural obligations under section 552.301(b) of the Government Code in asking this office for a ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). In this instance, section 552.101 of the Government Code makes information confidential and can provide a compelling reason for non-disclosure. Therefore, we will consider your assertion of this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as a taxpayer’s “identity, the nature, source, or amount of his income[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the federal tax identification number you marked does not fall within the definition of tax return information. See 26 U.S.C. § 6103(b)(2)(A). Accordingly, the city may not withhold that information under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Next, we note 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 letter, we have not received arguments from any of the third parties. Thus, none of the third parties has demonstrated that it has a protected proprietary interest in any of 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 the submitted information on the basis of any proprietary interests these third parties may have in the information.

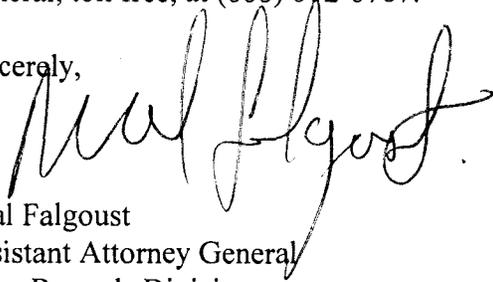
Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov’t Code § 552.136(b); see *id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we marked in Dean’s and Durant’s information under section 552.136 of the Government Code. The city must release the remaining information.

¹The 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).

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 509217

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Mike Freeman
President
Steele & Freeman
1301 Lawson Road
Fort Worth, Texas 76131
(w/o enclosures)

Mr. Greg Firebaugh
President
Dean Electric, Inc.
701 Hall Street
Cedar Hill, Texas 75104
(w/o enclosures)

Mr. Darrell Durant
Pete Durant & Associates, Inc.
2040 Golden Triangle Drive
Fort Worth, Texas 76177
(w/o enclosures)

Mr. Bill Scott
President
Scott Tucker Construction Company, LLC
908 South Sylvania Avenue
Fort Worth, Texas 76111
(w/o enclosures)

Ms. Cynthia Henneberger
President
Henneberger Construction, Inc.
8928 Fairglen Drive
Dallas, Texas 75231
(w/o enclosures)