



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2014

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2014-21912

Dear Ms. Sims:

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# 546019 (Lubbock Reference No. 1024).

The City of Lubbock (the "city") received a request for information pertaining to bid number 14-11851-KS, including the scoring criteria used to evaluate the winning bid. Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of Fisher Scientific, L.L.C. ("Fisher") and Metrohm USA, Inc. ("Metrohm"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the request for the scoring criteria used to evaluate the winning bid. To the extent any information responsive to this portion of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000)

(if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information contains the bid submitted by Fisher, which was specifically excluded from the scope of the request. Accordingly, this information is not responsive to the instant request. This ruling does not address the public availability of non-responsive information and the city is not required to release non-responsive information to this requestor.

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 Metrohm explaining why the submitted information should not be released. Therefore, we have no basis to conclude Metrohm has a protected proprietary interest in the submitted responsive 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 the submitted responsive information on the basis of any proprietary interest Metrohm may have in the information.

Section 552.136 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"). Upon review, the city must withhold the information we have marked under section 552.136 of the Government Code. As you raise no arguments against disclosure of the remaining responsive information, it must be released.

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/>

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).

[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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 546019

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)

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