



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-02721

Dear Mr. Phillips:

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# 336586 (City of Fort Worth Public Information Request No. 0206-09).

The City of Fort Worth (the "city") received a request for information pertaining to a named cab company. You state that the city is releasing some of the requested information. You claim that a portion of the submitted information is excepted from disclosure under section 552.136 of the Government Code. You also state that release of some of the submitted information may implicate the proprietary interests of Yellow Checker Cab Company ("Yellow Checker"). You notified Yellow Checker of the request and of its right to submit arguments to this office as to why its 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 certain circumstances). We have considered the exception you claim and have reviewed the submitted information.

Initially, we note, and you acknowledge, that the city has not complied with the time period prescribed by section 552.301 of the Government Code in submitting your request for a decision to this office. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). 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). Because section 552.136 of the Government Code, as well as third party interests, can provide compelling reasons to withhold information, we will consider whether or not the submitted information is excepted under the Act.

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 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 Yellow Checker explaining why the submitted information should not be released. Therefore, Yellow Checker has not provided us with any basis to conclude that it has protected proprietary interests 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 submitted information based upon the proprietary interests of Yellow Checker.

Section 552.136 states 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.” Gov't Code § 552.136(b). We agree that the city must withhold the insurance policy numbers you have highlighted in Exhibit C under section 552.136 of the Government Code. As no further exceptions against the disclosure of the submitted information are raised, the remaining information must be released to the requestor.

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 at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Laura E. Ream".

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/eb

Ref: ID# 336586

Enc. Submitted documents

cc: Requestor
(w/o enclosures)