



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2009

Ms. Jenny Gravley
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2009-09517

Dear Ms. Gravley:

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# 348680.

The City of Southlake (the "city"), which you represent, received a request for (1) the name, address, and owners of the company providing video surveillance, equipment, and service for the video cameras at a particular location; (2) the name of the city employee who oversees the company; and (3) a copy of the contract between the city and the company. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. You also claim that some of the submitted records may include information protected by copyright law. Additionally, you believe that this request for information implicates the proprietary interests of third parties. You state, and provide documentation showing, that you have notified Red Moon, Inc. ("Red Moon"), the interested third party, of the request and of the company's opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under the Act in certain circumstances).* We have considered the claimed exceptions and reviewed the submitted information.

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 decision, Red Moon has not submitted to this office any reasons explaining why its information should not be released. Therefore, this company has provided us with no basis to conclude that it has protected proprietary interests in any of the submitted information. *See, e.g., id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, we conclude that the city may not withhold any portion of the submitted information on the basis of any proprietary interest Red Moon may have in the information.

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. This section encompasses information made confidential by other statutes, such as section 418.182 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.182 provides:

- (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182. The fact that information may be related to a governmental body's security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state that the information at issue "identifies the specifications and operating procedures of the security system owned by the [city], including the type of system, type of monitor, and the location of the system." You also state that some of the marked information "identifies the specifications, operating procedures, and location of a security system at the [city's] town Square." Upon review, we determine that the information you have marked relates to the specifications, operating procedures, or location of a security system used to protect public

or private property from an act of terrorism or related criminal activity. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

You claim that some of the remaining information is excepted from public disclosure under section 552.136 of the Government Code. Section 552.136 provides 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.” *Id.* § 552.136. This office has concluded that insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information (1) you have marked under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code; and (2) we have marked pursuant to section 552.136 of the Government Code. The remaining information must be released to the requestor.¹

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

¹As our ruling is dispositive, we need not address your remaining claim.

Ref: ID# 348680

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Bryan Thompson
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(w/o enclosures)