



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-12303

Dear Ms. Byles:

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# 352638 (CFWPIR No. 3901-09).

The City of Fort Worth (the "city") received a request for thirteen categories of information pertaining to two specified companies for 2005. You state you will release some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. You also provide documentation showing that the city notified Irving Holdings, Inc. ("Irving") of the request for information and of its right to submit arguments to this office as to why the submitted information 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 considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the information, which we have marked, is not responsive to the present request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information or your arguments against its disclosure.

Next, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-02721 (2009). In that decision, we ruled that the city must withhold portions of the information at issue under section 552.136 of the Government Code. As we have no

indication that the law, facts, or circumstances on which the prior ruling was based have changed, the city must continue to rely on that ruling as a previous determination and withhold or release the same information that was at issue in the prior ruling in accordance with the previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

An interested third party is allowed ten business days after the date of its receipt of a 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Irving has not submitted comments to this office explaining why any portion of the submitted information relating to it should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate Irving's proprietary interests, and none of it may be withheld on this basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

Section 552.136 of the Government Code 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. Upon review, we agree the city must withhold the insurance policy numbers you have marked in Exhibit C-3 under section 552.136 of the Government Code. Further, the city must withhold the routing and account numbers we have marked in Exhibit C-4 under section 552.136 of the Government Code. However, the remaining information you have marked in Exhibits C-3 and C-4 is not subject to section 552.136, and it may not be withheld on that basis.

Finally, section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). We note the types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Further, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We agree the e-mail addresses you have marked must be withheld under section 552.137 of the

Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, (1) the city need not release nonresponsive information in response to the present request; (2) the city must continue to rely on Open Records Letter No. 2009-02721 as a previous determination and withhold or release the same information that was at issue in the prior ruling in accordance with the previous determination; (3) with the exception of the information we have marked for release, the city must withhold the information you have marked in Exhibit C-3 and the information we have marked in Exhibit C-4 under section 552.136; and (4) unless the owners of the e-mail addresses affirmatively consent to their disclosure, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 352638

Enc. Submitted documents

c: Requestor
(w/o enclosures)