



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 13, 2009

Ms. Janis K. Hampton
City Attorney
City of Bryan
P. O. Box 1000
Bryan, Texas 77805

OR2009-14435

Dear Ms. Hampton:

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# 358315.

The Bryan Police Department (the "department") received a request for information relating to a specified police dispatch record, including copies of all electronic messages and codes, and any other records concerning this case that have not already been provided to the requestor.¹ You assert the submitted explanatory chart of dispatch codes is not subject to disclosure under the Act. Alternatively, you state the release of the chart may implicate the proprietary rights of Tiburon, Inc. ("Tiburon"). You state, and provide documentation showing, that you have notified Tiburon 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 your arguments and reviewed the submitted information. We have also considered comments submitted by the

¹The department sought and received clarification from the requestor. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that you have only submitted the requested dispatch codes. The requestor also seeks any other records concerning this case that have not already been provided to him. To the extent this information exists, we presume the department has released it. If the department has not, it must do so at this time. *See id.* §§ 552.301, .302.

Next, we will address your contention that the submitted information does not consist of public information that is subject to disclosure under the Act. The Act applies only to "public information." *See id.* § 552.021. Section 552.002 of the Act defines public information as

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, is not the kind of information that is made public under section 552.021 of the Act. *See* ORD 581 at 6 (construing predecessor statute). In this instance, you state that the submitted information contains computer system command information. Upon review, however, we find that you have failed to demonstrate that the submitted dispatch codes function solely as tools to maintain, manipulate, or protect public property and have no other significance. *Id.* We therefore conclude that the submitted information is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002 (a), .021.

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 requested information relating to it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received correspondence from Tiburon explaining why its information should not be released. On behalf of Tiburon, you assert that the responsive information is excepted under section 552.110 of the Government Code. However, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Because we have not received comments from Tiburon, we have no basis to conclude that Tiburon has a protected proprietary interest in the responsive information; therefore, the department may not

withhold any portion of the submitted information on that basis. *See* 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 (1990). As you raise no exceptions to disclosure, the submitted information 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.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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 358315

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Tiburon, Inc.
6200 Stoneridge mall Road, Suite 400
Pleasanton, California 94588
(w/o enclosures)