



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2009

Ms. Molly Shortall
Assistant City Attorney
City of Arlington
Box 90231
Arlington, Texas 76004-3231

OR2009-15825

Dear Ms. Shortall:

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# 360599.

The City of Arlington (the "city") received a request for the most recent copies of all utility bills for buildings owned or operated by the city. You claim portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. Although you take no position regarding the public availability of the remaining information, you state the release of the information in Exhibit C may implicate the proprietary rights of Direct Energy, L.P. ("Direct Energy"). You state, and provide documentation showing, that you have notified Direct Energy 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 exception you claim and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

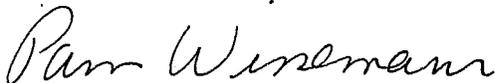
Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received correspondence from Direct Energy explaining why its information should not be released. Therefore, we have no basis to conclude that Direct Energy has a protected proprietary interest in the responsive information and the city may not withhold any portion of the information pertaining to Direct Energy 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.

Section 552.136 of the Government Code 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." Gov't Code § 552.136(b); *see also* § 552.136(a) (definition of "access device number" includes account numbers). You state the information you have marked consists of the city's account numbers for the various utility providers from whom the city purchases such services. Upon review, we agree the city must withhold the account numbers you have marked, as well as the account number we have marked, pursuant to section 552.136 of the Government Code. The remaining 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# 360599

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Direct Energy
Two Gateway Center
Pittsburgh, Pennsylvania 15222-1458
(w/o enclosures)