



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-10370

Dear Mr. Wallach:

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# 386182 (FW PIR No. W000585).

The City of Fort Worth (the "city") received a request for the city's contract with TriTech Software Systems ("TriTech") for its computer aided dispatch system. You claim some of the requested information is excepted from disclosure under sections 552.136 and 552.137 of the Government Code. While you take no position with respect to the public availability of the remaining submitted information, you state that the request may implicate the proprietary interests of the third parties whose information has been requested. Accordingly, you state that you have notified the interested third parties of this request for information and of their right to submit arguments to this office as to why the information should not be released.¹ 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.

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, none of the third parties have submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Thus, we

¹The interested third parties are TriTech, Deccan International, Iron Mountain, and Locution Systems, Inc.

have no basis to conclude that the release of any portion of the submitted information would implicate the third parties' interests, and none of the information may be withheld on that 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).

You claim the account numbers you have marked are excepted from 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." Gov't Code § 552.136. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). You state the account numbers "can be used to deposit or obtain money from the listed accounts." Based upon your representation, we agree the city must withhold the marked account numbers under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an e-mail address "provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent" or to an e-mail address "provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent[.]" *Id.* § 552.137(c)(1), (2). The e-mail address you have marked belongs to a representative of a company in a contractual relationship with the city and may not be withheld under section 552.137 of the Government Code.

You note, and we agree, portions of the submitted contract are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the account numbers you have marked under section 552.136 of the Government Code. The remaining information must be released, but

any information protected by copyright may only be released in accordance with copyright law.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 386182

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Ms. Roxanne Lerner
TriTech Software Systems
9860 Mesa Rim Road
San Diego, California 92121
(w/o enclosures)

Locutions Systems, Inc.
1626 Cole Boulevard, Suite 325
Golden, Colorado 80401
(w/o enclosures)

Ms. Karen Gustave
Iron Mountain
2100 Norcross Parkway, Ste 150
Norcross, Georgia 30071
(w/o enclosures)

Mr. Latha Nagaraj
Deccan International
5935 Connerstone Court West, Ste 230
San Diego, California 92121
(w/o enclosures)