



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 17, 2010

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

OR2010-12421

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# 390666 (PIR No. W001410).

The City of Fort Worth (the "city") received a request for all bids and pricing related to Project DEM10-02HHWD. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state the city has redacted certain information pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).<sup>1</sup> Although you take no position with respect to the public availability of the requested information, you state that release of the information at issue may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you have notified all interested third parties of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor.<sup>2</sup> *See* Gov't Code § 552.305(d) (permitting interested third party to submit

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<sup>1</sup>This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>The interested third parties are Clean Harbors Environmental Services; PSC Environmental Services, LLC; Pollution Control Industries, Inc.; MXI Environmental Services, LLC; Effective Environmental, Inc.; EQ Florida, Inc.; Environmental Industries, LP; Envirosolve; Heritage Environmental Services, LLC; and Mercury Waste Solutions, LLC.

to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have 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) of the Government Code 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 any arguments from any interested third parties. We, thus, have no basis for concluding that any portion of the submitted information constitutes proprietary information. *See id.* § 552.110; 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. Accordingly, the city may not withhold any of the submitted information based on the proprietary interests of any interested third parties.

We note a portion of the submitted information is subject to section 552.130 of the Government Code.<sup>3</sup> Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

You state you have marked e-mail addresses of members of the public for redaction under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>4</sup> Section 552.137 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). Gov't Code § 552.137(a)-(c). We note, however, that Open Records Decision No. 684 does not authorize the withholding of e-mail addresses that fall under one of the exceptions listed in section 552.137(c), which includes e-mail addresses provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent, and those contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup>As noted above, this office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

course of negotiating the terms of a contract or potential contract. *See* Gov't Code § 552.137(c). The e-mail addresses you have marked for redaction are specifically excluded by subsection (c). Consequently, the city may not withhold any e-mail addresses within the submitted information under section 552.137(a).

Finally, we note that portions of the submitted information appear to be 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. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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.

In summary, the city must withhold the information we have marked under section 552.130 of the Government Code. As no arguments have been made against the disclosure of the remaining information, it must be released to the requestor, but any information that is 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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 390666

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Mr. Brian Ebert  
Proposal Manager  
Clean Harbors Environmental Services  
8004 Chancellor Row  
Dallas, Texas 75247  
(w/o enclosures)

Mr. Jason Box  
Director Strategic Marketing  
PSC Environmental Services, L.L.C.  
5151 San Felipe, Suite 1600  
Houston, Texas 77056  
(w/o enclosures)

Mr. Jonathan Blazo  
Proposal Manager  
Pollution Control Industries, Inc.  
4343 Kennedy Avenue  
East Chicago, Illinois 46312  
(w/o enclosures)

Ms. Peggy Snead  
Government Sales Manager  
MXI Environmental Services, L.L.C.  
26319 Old Trail Road  
Abingdon, Virginia 24210  
(w/o enclosures)

Mr. Geoffrey Harfield  
Director of Sales and Marketing  
Effective Environmental, Inc.  
2515 South Beltline  
Balch Spring, Texas 75181  
(w/o enclosures)

Mr. Robert Wheatley  
Vice President  
EQ Florida, Inc.  
7202 East 8<sup>th</sup> Avenue  
Tampa, Florida 33619  
(w/o enclosures)

Mr. Chris Cowman  
Environmental Industries, L.P.  
4125 Billy Mitchell Drive, Suite 100  
Addison, Texas 75001  
(w/o enclosures)

Mr. Tim Taylor  
Project Manager  
Envirosolve  
2120 Southwest Boulevard  
Tulsa, Oklahoma 74107  
(w/o enclosures)

Mr. Ricky Belk  
Heritage Environmental Services, L.L.C.  
1840 North 105<sup>th</sup> Avenue  
Tulsa, Oklahoma 74116  
(w/o enclosures)

Mr. Joseph Carruth  
Director of Environmental Affairs  
Mercury Waste Solutions, L.L.C.  
21211 Durand Avenue  
Union Grove, Wisconsin 53182-9711  
(w/o enclosures)