



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2012

Ms. Elizabeth M. Ruhmann
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2012-04546

Dear Ms. Ruhmann:

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# 448914.

The City of El Paso (the "city") received a request for a copy of the winning proposal for a specified request for proposals. You claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code. You also inform us release of the submitted information may implicate the proprietary interests of Shetler Security Services ("Shetler"). Accordingly, you notified Shetler of the request for information and of its right to submit arguments to this office as to why its 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 submitted arguments and 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 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any comments from Shetler. Thus, Shetler has not demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 on the basis of any proprietary interests Shetler may have in the information.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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). 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.” *Id.* § 552.136(a). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code. However, you also claim the Employer Identification Number (“EIN”) and the Texas Sales Tax Number (“TSTN”) in the submitted information are access device numbers. We note, however, that an EIN is not an “access device number” for the purposes of section 552.136. The EIN is merely an employer tax identification number. Therefore, you may not withhold the EIN you have marked under section 552.136 of the Government Code. Further, you have failed to explain how the TSTN in the submitted information constitutes an access device number for purposes of section 552.136. Consequently, the city may not withhold the TSTN under section 552.136. As no further exceptions to disclosure are raised, the city must release the remaining information.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/ag

Ref: ID# 448914

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Michael Shetler
Shetler Security Services
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El Paso, Texas 79925
(w/o enclosures)