ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2014

Mr. Robert Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2014-05480

Dear Mr. Ray:

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# 518333.

The City of Longview (the "city") received one request for documents, including the score sheets, utilized by the evaluation committee, proposals, any information provided by the proposers after the proposal due date, and the executed contract related to two requests for proposals pertaining to collection agency services. The city received a second request from a different requestor for the executed contract, scoring evaluations, pricing of the vendors, a list of companies that requested the request for proposal and submitted a proposal, and reports of contract performance related to one of the requests for proposals pertaining to collection agency services. You state the city has released some of the requested information to the requestors. You state the city takes no position with respect to the remaining requested information, but its release may implicate the interests of third parties. Accordingly, you state the city notified Credit Management, LP ("Credit Management"); Diversified Credit Systems; FMA Alliance Ltd.; J.C. Christensen & Associates, Inc. ("JCC"); Linebarger Goggan Blair & Sampson, L.L.P. ("Linebarger"); Municipal Services Bureau ("MSB"); NCO Financial Systems, Inc.; and Receivables Management Solutions of the requests for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). You state Linebarger has consented to the release of its

proposal relating to one of the requests for proposals. We have reviewed the submitted information and the arguments submitted by a representative of Credit Management.

Initially, JCC has submitted a letter signed by the first requestor noting his withdrawal of his request for information pertaining to JCC. Therefore, JCC's proposal is not responsive to the first request. We further note JCC's proposal is not responsive to the second request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information to the requestors.

Next, we note some of the requested information pertaining to MSB was the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2014-03991 (2014). In that ruling, we held (1) the city must withhold the information marked under section 552.110(a) of the Government Code, (2) to the extent the client information is not publicly available on MSB's website, the city must withhold the client information at issue under section 552.110(b) of the Government Code, and (3) release the remaining information. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2014-03991 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address the remaining arguments for the remaining requested information not subject to Open Records Letter No. 2014-03991.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice 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 letter, we have only received arguments from Credit Management. Thus, the remaining third parties have failed to demonstrate that they have a protected proprietary interest in any of the remaining responsive 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 the submitted information on the basis of any proprietary interests any of the remaining third parties may have in the information.

Credit Management submits arguments against disclosure of some of its information under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110. Section 552.110(a) protects the proprietary interests of private parties by

excepting from disclosure information that is trade secrets obtained from a person and information that is privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a "trade secret" from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* ORD 552 at 2. Section 757 provides a trade secret to be as follows:

> [A]ny formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (citation omitted); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret, as well as the Restatement's list of six trade secret factors.[1] *See* RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the

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[1]There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

> (1) the extent to which the information is known outside of [the company's] business;
> (2) the extent to which it is known by employees and others involved in [the company's] business;
> (3) the extent of measures taken by [the company] to guard the secrecy of the information;
> (4) the value of the information to [the company] and to [its] competitors;
> (5) the amount of effort or money expended by [the company] in developing the information; and
> (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Credit Management claims some of its information constitutes trade secret information. Upon review, we find Credit Management has established a *prima facie* case that some of its information constitutes trade secrets. Accordingly, to the extent the client information is not publicly available on Credit Management's website, the city must withhold the client information at issue and the information we have marked under section 552.110(a). We find Credit Management has failed to demonstrate its remaining information for which it asserts section 552.110(a) meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the city may not withhold the remaining information at issue on the basis of section 552.110(a).

Section 552.136(b) of the Government Code provides, "Notwithstanding 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."[2] Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Thus, the city must withhold the bank account, bank routing, and insurance policy numbers contained in the remaining information under section 552.136 of the Government Code.

We also note that some of the remaining information may 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. *See* Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.*; *see also* 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 continue to rely on Open Records Letter No. 2014-03991 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. To the extent the client information is not publicly available on Credit Management's website, the city must withhold the client information at issue and the information we have marked under section 552.110(a). The city must withhold the bank account, bank routing, and insurance policy numbers contained in the remaining information under section 552.136 of the Government Code. The remaining responsive information must be released; however, any information protected by copyright may only be released in accordance with copyright law.

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[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 518333

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

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