



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2015

Ms. Criselda Palacios
City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540

OR2015-04603

Dear Ms. Palacios:

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# 555892.

The City of Edinburg (the "city") received a request for vendor responses to RFP 2014-005.¹ Although you do not take any position as to whether the submitted information is excepted from disclosure under the Act, you state, and provide documentation showing, you notified third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.² *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)

¹We note the city did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(e). Nevertheless, section 552.136 of the Government Code, which is a mandatory exception, and third-party interests can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies). Thus, we will consider whether the submitted information must be withheld under the Act on those grounds.

²The notified third parties are Fulcrum Consulting; Siemens Industry, Inc.; Enviro-Lite Solutions, LLC; USA Promlite Technology, Inc.; and Schneider Electric Buildings Americas, Inc.

(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). We have reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request at issue because it consists of vendor responses to a request for proposals other than RFP 2014-005. Thus, this information is not responsive to the request. This ruling does not address the public availability of that information, and the city need not release any non-responsive information.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in the submitted 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 the submitted information on the basis of any proprietary interest these third parties may have in the information.

Section 552.136(b) 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); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the city must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

In summary, the city must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. 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.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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 555892

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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