



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2015

Mr. Eddie Martin
Deputy City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2015-15648

Dear Mr. Martin:

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# 573657 (Ref. No. W021315-050815).

The City of Arlington (the "city") received a request for "the winning submission" submitted in response to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of a particular third party. Accordingly, you state, and provide documentation showing, you notified this third party, Utility Service Partners, Inc. ("USP"), of the request for information and of its right to submit arguments to this office as to why the 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 received arguments from USP. We have also received arguments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note USP objects to disclosure of certain information, namely USP's consolidated financial statements, that the city has not submitted to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review.

Next, USP claims specified portions of the submitted information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999).

Upon review, we find USP has demonstrated some of its information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury to USP. Accordingly, the city must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, to the extent USP has published any of the customer information at issue on its website, that information is not confidential under section 552.110. We find USP has not established any of the remaining information constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. *See* Gov’t Code § 552.110(b). Therefore, the city may not withhold any of the remaining information at issue on this basis.

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.”¹ *Id.* § 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. Accordingly, the city must withhold the insurance policy number we have marked in the remaining information under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.110(b) of the Government Code. However, to the extent USP has published any of the customer information at issue on its website, that information is not confidential under section 552.110. The city must withhold the insurance policy number in the remaining 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.

¹The Office of the Attorney General will raise a mandatory exception like section 552.136 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 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 573657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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