



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2016

Ms. Katherine R. Fite
Assistant General Counsel
Texas Department of Information Resources
P.O. Box 13564
Austin, Texas 78711-3564

OR2016-03108

Dear Ms. Fite:

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# 597599.

The Department of Information Resources (the "department") received a request for the submitted proposals for a specified bid.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of AT&T Consulting, Dell, HP Enterprise Services, Unisys, and World Marketing, Inc. Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2012-11754 (2012). We have no indication the law, facts, or circumstances on which

¹We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Open Records Letter No. 2012-11754 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the department must continue to rely on Open Records Letter No. 2012-11754 as a previous determination and withhold or release the previously ruled upon information 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). To the extent the information at issue is not encompassed by the previous ruling, we will address the arguments against its release.

The department asserts the remaining information is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Therefore, we do not address the department's argument under section 552.110.

Next, 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) 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 any of the third parties have a protected proprietary interest 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 department may not withhold the submitted information on the basis of any proprietary interest the third parties 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."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the department must withhold

²The 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).

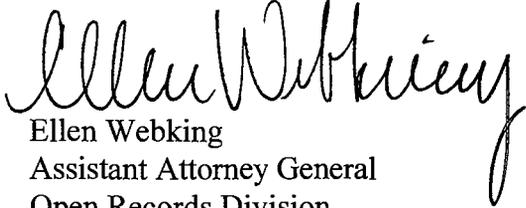
the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

In summary, to the extent the submitted information was at issue in Open Records Letter No. 2012-11754, the department must continue to rely on Open Records Letter No. 2012-11754 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. Otherwise, the department must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The department 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 597599

Enc. Submitted documents

c: Requestor
(w/o enclosures)

AT&T
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P.O. Box 13564
Austin, Texas 78711-3564
(w/o enclosures)

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Unisys
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World Market, Inc.
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