



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 19, 2016

Mr. Richard A. McCracken
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2016-03993

Dear Mr. McCracken:

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# 598837 (PIR No. W047526).

The City of Fort Worth (the "city") received a request for information pertaining to a specified request for proposals. You state you have released some information. 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 AT&T, Level 3 Communications, Communications Technologies, Inc., Unified Municipal Networks, Inc., and Charter Fiberlink TX-CCO, LLC/Marcus Cable Associates, LLC. Accordingly, you state, and provide documentation showing, you notified these 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. *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 reviewed the submitted information.

Initially, we note 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 the any of the third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the third parties has 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 city may not withhold any of the information at issue on the basis of any proprietary interests the third parties may have in it.

We note some of the submitted information is subject to section 552.136 of the Government Code.¹ Section 552.136 of the Government Code states “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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Upon review, we find the city must withhold the insurance police numbers in the submitted information under section 552.136 of the Government Code.

We note 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* 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 withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The city must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

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

¹The 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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 598837

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Robert Adams
Strategic Account Lead
AT&T
311 South Akard Street
Dallas, Texas 75202
(w/o enclosures)

Mr. Daniel G. Hammons
CEO
Unified Municipal Networks, Inc.
5825 County Road, #1017
Joshua, Texas 76058
(w/o enclosures)

Mr. Corbet Whitton
VP Commercial Services
Level 3 Communications
1025 Eldorado Boulevard
Broomfield, Colorado 80021
(w/o enclosures)

Mr. Peter Gull
Communications Technologies, Inc.
3684 Centerview Drive
Chantilly, Virginia 20151
(w/o enclosures)

Ms. Jill Stark
Vice President
Charter Fiberlink TX-CCO, LLC
Marcus Cable Associates, LLC
12405 Powerscourt Drive
Saint Louis, Missouri 63131
(w/o enclosures)