



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 13, 2016

Ms. Cary Grace  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

OR2016-13454

Dear Ms. Grace:

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# 614807 (ORR Nos. 24254 & 25508).

The City of Austin (the "city") received a request for contacts and communications between the city's police department (the "department") and a specified third party. A second request from a different requestor additionally seeks all information related to services, technology, and equipment acquired during a specified time period from several specified third parties.<sup>1</sup> You state the city does not maintain information responsive to a portion of the second

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<sup>1</sup>You state the city sought and received clarification of the information requested by the second requestor. 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

request.<sup>2</sup> You state the city will release some of the requested 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 Vigilant Solutions, Inc. (“Vigilant”).<sup>3</sup> Accordingly, you state, and provide documentation showing, you notified Vigilant 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 reviewed the submitted 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) 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 Vigilant explaining why the submitted information should not be released. Therefore, we have no basis to conclude Vigilant 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 the submitted information on the basis of any proprietary interest Vigilant may have in the information. As no exceptions to disclosure have been raised, the city must release the submitted 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/>.

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<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>You acknowledge the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the interests of the third party in withholding the submitted information. *See id.* §§ 552.007, .302, .352; *see also* Open Records Decision No. 586 at 3 (1991).

[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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/dm

Ref: ID# 614807

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

1 Third Party  
(w/o enclosures)

