



January 13, 2015

Ms. Elaine Nicholson
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-00597

Dear Ms. Nicholson:

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# 549893.

The City of Austin (the "city") received two requests for information pertaining to specified vendors, including (1) all information pertaining to Propart, Inc. ("Propart"), Propart employees and representatives, named individuals, DXPE, Sepco, PMG and PMG representatives, city representatives, and any other outside parties; (2) documents and correspondence pertaining to named individuals and city employees; (3) bids, requests for bids, purchase orders, invoices, billing statements, and any other documents during a specified time period pertaining to the purchase or potential purchase by the city from PMG, Propart, and three named individuals; (4) correspondence during a specified time period pertaining to bids, request for bids, purchase orders, invoices, billing statements, and any other documents from a named individual pertaining to any purchase or potential purchase by the city from PMG, Propart, and three named individuals; (5) correspondence during a specified time period from named individuals pertaining to dealings with the city; (6) correspondence during a specified time period from named individuals pertaining to dealings with named individuals, PMG, and Propart; and (7) documents during a specified time period showing vendor registrations with the city pertaining to named individuals, PMG, and Propart. You state the city will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you inform us its release may implicate the proprietary interests of PMG. Accordingly, you state, and provide documentation demonstrating, the city notified PMG of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to

attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (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, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether any of the submitted information must be withheld under the Act. In addition, we note some of the submitted information contains information subject to section 552.136 of the Government Code. As this section makes information confidential under the Act, we will also consider its applicability to the information at issue.¹

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received correspondence from PMG. Therefore, we have no basis to conclude PMG has any protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 portion of the submitted information based upon the proprietary interests of PMG.

Section 552.136 of the Government Code states “[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”). Upon review, we find the city

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information.²

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 549893

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Glenn Lee Roberts
402 Lakeview Drive
Horseshoe Bay, Texas 78657
(w/o enclosures)

²We note the information being released includes a social security number. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).