



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 4, 2016

Mr. Micah King  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2016-22256

Dear Mr. King:

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# 629037 (PIR# 27807).

The City of Austin (the "city") received a request for information pertaining to a specified franchise fee. The city states it will release most of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of AT&T; Google Fiber ("Google"); Grande Communications ("Grande"); and Time Warner Cable Texas, LLC aka Charter Communications, Inc. ("Time Warner").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 received comments on behalf of AT&T, Grande, and Time

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<sup>1</sup>We note the city failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.136 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the city's argument under section 552.136. Further, because third party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on third party interests. *See id.* §§ 552.001, .302, .352.

Warner. We have considered the submitted arguments and 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 Google explaining why the submitted information should not be released. Therefore, we have no basis to conclude Google 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 Google may have in the information.

AT&T and Grande argue some their information is 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 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

AT&T and Grande argue their information at issue consists of commercial information, the release of which would cause the companies substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find AT&T and Grande have demonstrated the information we marked constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the city must withhold the information we marked under section 552.110(b) of the Government Code.<sup>2</sup> However, we find AT&T has not established any of the remaining information at issue constitutes commercial or financial information, the release 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 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." Gov't Code

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<sup>2</sup>As our ruling is dispositive, we need not address Grande's remaining arguments against disclosure of this information.

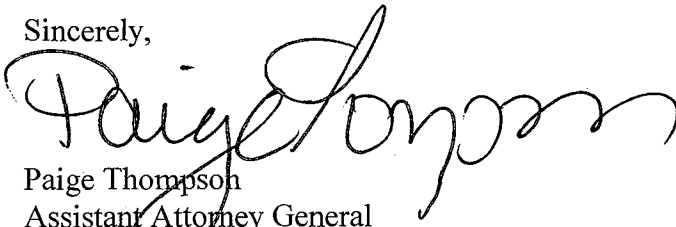
§ 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the city must withhold the information we marked under section 552.136 of the Government Code. However, we find the city has failed to demonstrate the applicability of section 552.136 to the remaining information, and none of it may be withheld under section 552.136 of the Government Code.

In summary, the city must withhold the information we marked under section 552.110(b) of the Government Code and the information we marked 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.

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](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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 629037

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)