



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 21, 2016

Mr. Guillermo Trevino  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2016-23722

Dear Mr. Trevino:

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# 629598 (PIR No. W053678).

The City of Fort Worth (the "city") received a request for invoices and procurement records related to the purchase of specified items. You state you will release some information and you have no information responsive to a portion of the request.<sup>1</sup> 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 Harris Corporation ("Harris"), Four Points Technology ("Four Points"), and Cellebrite USA ("Cellebrite").<sup>2</sup> Accordingly, you state you notified Harris, Four Points, and Cellebrite 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

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<sup>1</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>2</sup>We note, and the city acknowledges, the city did not comply with section 552.301 of the Government Code with regard to some of the submitted info. *See* Gov't Code § 552.301(e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

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). You also indicate release of the submitted information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). Accordingly, you state you have notified the FBI of its right to submit comments to this office explaining why the submitted information should not be released.<sup>3</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information.

Initially, you state most of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-00174 (2015), 2015-04722 (2015), 2016-02873 (2016), 2016-06744 (2016), and 2016-14226 (2016). In those rulings, we determined the city: (1) must withhold certain information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code; (2) may withhold certain information under section 552.108(b)(1) of the Government Code; (3) must withhold certain information under section 552.136 of the Government Code; and (4) must release certain information; however, any information subject to copyright may only be released in accordance with copyright law. You state there has been no change in the law, facts, or circumstances on which these previous rulings were based. Accordingly, we conclude the city must rely on Open Records Letter Nos. 2015-00174, 2015-04722, 2016-02873, 2016-06744, and 2016-14226 as previous determinations and release or withhold the identical information in accordance with these rulings. *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 that information is or is not excepted from disclosure). We will review the submitted information, which is not encompassed by the previous rulings.

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 letter, we have not received comments from Harris, Four Points, or Cellebrite explaining why the submitted information should not be released. Therefore, we have no basis to conclude Harris, Four Points, or Cellebrite 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

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<sup>3</sup>As of the date of this letter, we have not received comments from the FBI explaining why the submitted information should not be released.

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 Harris, Four Points, or Cellebrite 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.”<sup>4</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code.

In summary, the city must rely on Open Records Letter Nos. 2015-00174, 2015-04722, 2016-02873, 2016-06744, and 2016-14226 as previous determinations and release or withhold the identical information in accordance with these rulings. 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.

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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

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<sup>4</sup>The 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).

Ref: ID# 629598

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)