



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 2, 2017

Ms. Evelyn Kimeu  
First Assistant City Attorney  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2017-12127

Dear Ms. Kimeu:

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# 660428.

The City of Missouri City (the "city") received a request for information pertaining to a specified address.<sup>1</sup> Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Engineering & Facilities Consulting, Inc. ("EFC").<sup>2</sup> Accordingly, you state, and provide documentation showing, you notified EFC of the request and its right to submit arguments to this office. *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

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<sup>1</sup>We note the requestor clarified her request. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup>We note we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have considered the city's response to that request.

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 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 comments from EFC. Thus, we have no basis to conclude EFC has a 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 of the submitted information on the basis of any proprietary interest EFC may have in the information.

Section 552.136(b) 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>3</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the city must withhold the information we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to discern whether the e-mail addresses at issue fall within the scope of section 552.137(c). Therefore, we must rule conditionally. To the extent the submitted e-mail addresses are not excluded by subsection 552.137(c) of the Government Code, the city must withhold the e-mail addresses at issue under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, to the extent the submitted e-mail

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<sup>3</sup>The 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).

addresses are excluded by subsection 552.137(c), the city may not withhold the e-mail addresses at issue under section 552.137 but, instead, must release them to the requestor.

In summary, the city must withhold the information we marked under section 552.136 of the Government Code. To the extent the submitted e-mail addresses are not excluded by subsection 552.137(c) of the Government Code, the city must withhold the e-mail addresses at issue under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. The remaining information must be released.

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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/eb

Ref: ID# 660428

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)