



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 25, 2017

Ms. Mayra Gonzales  
City Secretary  
City of Galena Park  
P.O. Box 46  
Galena Park, Texas 77547

OR2017-16714

Dear Ms. Gonzales:

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# 668612.

The City of Galena Park (the "city") received two requests from different requestors for information pertaining to inspection reports of a specified building. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Furthermore, you indicate the submitted information may contain proprietary information excepted from disclosure under the Act. Accordingly, you state you notified MC Consultants, Inc. and ATC Group Services, LLC of the request 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 Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-10279 (2017). In that ruling, we determined the city must withhold the marked information under section 552.139(b)(3) of the Government Code to the extent the submitted identification cards were issued to an official or employee of the Texas Department of State

Health Services (“DSHS”), but release the remaining information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the city must continue to rely on Open Records Letter No. 2017-10279 as a previous determination and withhold or release the identical information in accordance with that ruling. *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 information is or is not excepted from disclosure). We consider the city’s arguments to the extent the submitted information was not previously ruled upon.

Next, we note 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude these companies have 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 the third parties may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). While you argue the release of the submitted information could harm the third parties by giving an advantage to its competitors, such an interest in protecting the information belongs to the third parties and not the city. Therefore, we find the city may not withhold the submitted information under section 552.104(a) of the Government Code.

Section 552.139(b)(3) of the Government Code provides, “a photocopy or other copy of an identification badge issued to an official or employee of a governmental body” is confidential.<sup>1</sup> Gov’t Code § 552.139(b)(3). We note the submitted information includes photocopies of identification cards of DSHS. However, we are unable to determine if the

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<sup>1</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).

identification cards in the photocopies were issued to an official or employee of DSHS. Thus, we must rule conditionally. Therefore, to the extent the identification cards were issued to an official or employee of DSHS, the city must withhold the identification cards under section 552.139(b)(3) of the Government Code. Conversely, to the extent the identification cards were not issued to an official or employee of DSHS, the city may not withhold them on that basis.

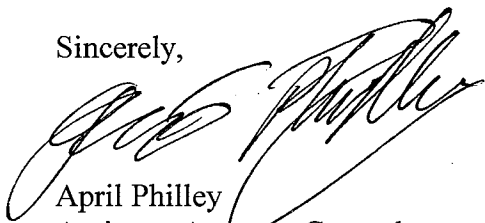
We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold or release the identical information in accordance with Open Records Letter No. 2017-10279. To the extent the identification cards were issued to an official or employee of DSHS, the city must withhold the identification cards under section 552.139(b)(3) of the Government Code. The remaining information must be released in accordance with copyright law.

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,



April Philley  
Assistant Attorney General  
Open Records Division

AP/sb

Ref: ID# 668612

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)