



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 13, 2017

Ms. Anita Crethers
Office Assistant II
Business Development & Procurement
City of Dallas
1500 Marilla Street, Room 3FN
Dallas, Texas 75201

OR2017-20951

Dear Ms. Crethers:

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# 676382 (Reference# C004693-062217).

The City of Dallas (the "city") received a request for the proposals submitted by all vendors for a specified bid. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of BW Collision Repair, Inc.; Eddie's Mechanic and Body Repair, Inc.; First Class Auto, Inc.; Graff Chevrolet Company; Martin's Paint & Body Shop Inc. ("Martin's"); National Fleet Inc.; Park Cities Ford Lincoln; Six Construct d/b/a Budget Auto Bodyshop; Southwest International Truck, Inc.; and Trash Truck Repair.¹ Accordingly, you state, and provide documentation showing, the city notified these third parties 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 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

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301 (b), (e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

in certain circumstances). We have received comments from Martin's. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties 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 the remaining third parties may have in the information.

Although Martin's objects to the release of its information at issue, we note Martin's has not raised any specific exceptions to disclosure or otherwise adequately explained why its information should not be released. Accordingly, we have no basis for finding Martin's has a protected proprietary interest in the submitted information. *See* ORDs 661 at 5-6, 552 at 5, 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Martin's 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."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

We note some of the information at issue 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

²The 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).

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 the insurance policy numbers in the submitted information under section 552.136 of the Government Code. As no further exceptions to disclosure have been raised, the city must release the remaining information; however, any information subject to copyright may only 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, 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 676382

Enc. Submitted documents

c: Requestor
(w/o enclosures)

10 Third Parties
(w/o enclosures)