



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 24, 2019

Mr. Matthew Murray  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, Third Floor  
Fort Worth, Texas 76102

OR2019-13876

Dear Mr. Murray:

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# 767056 (W082613).

The City of Fort Worth (the "city") received a request for six categories of information pertaining to twenty-one specified solicitations. The city has informed this office it does not have some of the requested information.<sup>1</sup> Although the city takes no position as to whether the submitted information is excepted under the Act, it states release of this information may implicate the proprietary interests of Behavioral Measures & Forensic Services Southwest, Inc.; CASA of Tarrant County; Girls Embracing Mothers, Inc.; Hired Hands, Inc.; a named licensed polygraph examiner; JPS Foundation; Lena Pope Home, Inc. ("Lena Pope"); MasterWord Services, Inc. ("MasterWord"); NewDay Services; Ruize Protective Service, Inc.; SSB Bart Group, Inc.; and Wood and Associates Polygraph Service.<sup>2</sup> Accordingly, the city states, and provides documentation demonstrating, it notified these third parties of the request for information and of their rights to submit arguments to this

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

<sup>2</sup>We 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). Nonetheless, 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.

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 from Lena Pope and MasterWord. 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Lena Pope and MasterWord explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties 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 any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, we note Lena Pope argues against the disclosure of information the city has not submitted to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information submitted as responsive by the city.<sup>3</sup> *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. Lena Pope and MasterWord state they have competitors. In addition, Lena Pope and MasterWord state release of their information at issue would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Lena Pope and MasterWord have established the release of the information they seek to withhold would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we marked under section 552.104(a) of the Government Code.

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<sup>3</sup>As we are able to make this determination, we need not address Lena Pope's arguments against disclosure of this information.

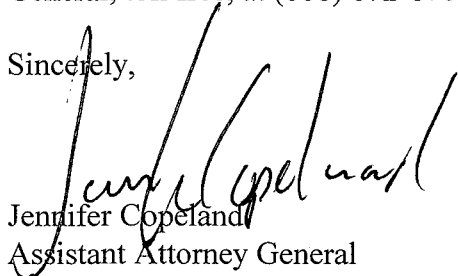
Section 552.136 states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. However, the remaining information Lena Pope has indicated is not subject to section 552.136 and may not be withheld on that basis.

In summary, the city may withhold the information we marked under section 552.104(a) of the Government Code. The city must withhold the insurance policy numbers in the remaining information 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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

Ref: ID# 767056

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

12 Third Parties  
(w/o enclosures)