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ATTORNEY GENERAL OF TEXAS

January 12, 2022

Mr. Daniel Sylvia
Counsel for the City of Dayton
Olson & Olson LLP
1517 Trinity Street
Liberty, Texas 77575

OR2022-01152

Dear Mr. Sylvia:

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# 924822.

The City of Dayton (the "city"), which you represent, received a request for specified insurance documentation submitted by Summit Drilling Services, LLC ("Summit"). 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 Summit. Accordingly, you state, and provide documentation showing, you notified Summit of the request for information and of its 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 in certain circumstances). We have 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 not received comments from Summit explaining why the submitted information should not be released. Therefore, we have no basis to conclude Summit has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly,

the city may not withhold the submitted information on the basis of any proprietary interest Summit 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.”¹ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold all insurance policy numbers in the submitted information 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). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, 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 that a governmental entity maintains 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 determine if the e-mail addresses within the remaining information fall within the scope of section 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail addresses in the remaining information are not excluded by section 552.137(c), the city must withhold them under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. *See id.* § 552.137(b). However, to the extent the e-mail addresses are excluded by section 552.137(c), the city may not withhold them under section 552.137 of the Government Code.

We note some of the remaining information may 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 copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold all insurance policy numbers in the submitted information under section 552.136 of the Government Code. To the extent the e-mail addresses in the remaining information are not excluded by section 552.137(c), the city must withhold them under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must release the remaining

¹ 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).

information; however, any information subject to copyright may be released only 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Tim Neal
Assistant Attorney General
Open Records Division

TN/ba

Ref: ID# 924822

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)