



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2022

Mr. Gary A. Scott
City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2022-06679

Dear Mr. Scott:

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# 933518.

The City of Conroe (the "city") received a request for information pertaining to a specified request for proposals. The city states it released some responsive information. The city also states it does not have some of the requested information.¹ Although the city takes no position regarding whether the submitted information is excepted from disclosure under the Act, the city informs us its release may implicate the proprietary interests of the following third parties: Accela, Inc.; MaintStar, Inc.; N. Harris Computer Corporation d/b/a CityView; The Davenport Group USA, Ltd. ("Davenport"); and Tyler Technologies, Inc. ("Tyler"). Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their 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 on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Davenport and Tyler. We have considered the submitted arguments and reviewed the submitted information.²

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² We note the submitted information includes the requestor's bid. As we assume the requestor does not seek access to the requestor's own bid, we do not address the public availability of that 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) of the Government Code 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). We note that, although Davenport provided correspondence to our office generally objecting to the release of its information at issue, Davenport has not provided arguments explaining why any of the exceptions under the Act are applicable to the information at issue. Furthermore, as of the date of this letter, we have not received comments from the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude Davenport or the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the city may not withhold any of the information at issue on the basis of any proprietary interest Davenport or the remaining third parties may have in the information.

Section 552.110(b) of the Government Code states "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Tyler argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Tyler has demonstrated the information at issue constitute trade secrets. Accordingly, the city must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the client information pertaining to Tyler is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(b).³

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."⁴ *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 the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

³ As our ruling is dispositive, we need not address Tyler's remaining argument against disclosure of this information.

⁴ 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).

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

In summary, the city must withhold the information we marked under section 552.110(b) of the Government Code; however, to the extent the client information pertaining to Tyler is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(b) of the Government Code. The city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. 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 <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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 933518

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)