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October 7, 2016

Vigilant Solutions
2021 Las Positas Court, Suite 101
Livermore, California 94551

via facsimile: (925) 398-2113

Re: City of Fort Worth Public Information Request No. W055275 from Isaiah X. Smith
Request for All City of Fort Worth Records Pertaining to Cell Site Simulators and Other
Related Records

To Whom It May Concern:

On September 16, 2016, the City of Fort Worth (the "City") received a written request from Isaiah X. Smith (the "requestor") as referenced above. A copy of the request is attached.

The requested files include records from your organization. The Attorney General's Office is reviewing this matter and they will issue a decision on whether Texas law requires us to release your papers. Generally, Texas law requires that the City release all requested information, but there are exceptions. As described below, you have the right to object to the release of the requested information by submitting a written brief to the Attorney General's Office and arguing that one or more exceptions apply to your information. If you want to submit your objections and a brief to the Attorney General's Office, you must do so immediately. If the Attorney General's Office does not receive your objections and briefing within 10 business days, it may conclude that no exception applies and direct the City to release your information.

The requested information at issue may be excepted from disclosure under portions of the Texas Government Code (the Texas Public Information Act (the "Act")). Pursuant to section 552.301 of the Government Code, the City has sought an opinion from the Attorney General's Office to determine whether the City must release the requested information. The City has submitted to the Attorney General a copy of the request for information and a copy of the requested information along with other material required by the Act.

Under the Act, all information held by governmental bodies is open to public disclosure unless it falls within one of the Act's specific exceptions to disclosure. The Act places on the custodian of records the burden of demonstrating that the records are excepted from public disclosure. Attorney General Opinion H-436 (1974). However, in cases such as this one, where a third party's interest is implicated, the governmental body may rely on the third party to

OFFICE OF THE CITY ATTORNEY

The City of Fort Worth ★ 1000 Throckmorton Street ★ Fort Worth, Texas 76102
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establish that the information should be withheld under applicable exceptions intended to protect those interests. Gov't Code § 552.305; Open Records Decision No. 542 (1990).

If you wish to claim that the requested information is confidential information, you have the right to submit additional information or a legal briefing to the Attorney General. You are not required to submit a briefing to the Attorney General, but if you decide not to submit a briefing, the Office of the Attorney General may presume that you have no privacy interest in the requested information. In other words, your failure to take timely action may result in the requested information being released to the public. If you decide to submit a briefing, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit briefing to the Attorney General, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and;
- c) explain why each exception applies. Gov't Code § 552.305(d).

A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436. You may contact this office to review the information at issue in order to make your arguments. The Act does not require the Attorney General to raise and consider exceptions that have not been raised. The Attorney General is generally required to issue a decision within 45 working days. You must send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e). Please also provide the City with a copy of your communication with the Attorney General.

Commonly Raised Exceptions:

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may

result in the release of requested information. We have listed some commonly-claimed exceptions in the Government Code concerning privacy information and cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Trade Secrets and Commercial or Financial Information

Trade Secrets:

In re Bass, 113 S.W.3d 735 (Tex. 2003).

Hyde Corp. v. Huffines, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

Open Records Decision No. 552 (1990).

Commercial or Financial Information:

The commercial or financial information prong of section 552.110 was amended by the Seventy-sixth Legislature. The amendment became effective September 1, 1999. At the time of publication of this form, there were no cases or opinions construing the amended provision.

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.--Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W. 3d 735 (Tex. 2003).

National Parks & Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

Open Records Decision No. 639 (1996).

Section 552.131: Economic Development Negotiation Information

Other Possible Exceptions:

Sections 418.176 through 418.182 of the Government Code, part of the Texas Homeland Security Act, make confidential certain information related to terrorism or related criminal activity.

If you have questions about this notice or release of information under the Act, please refer to the Public Information Handbook published by the Office of the Attorney General, or contact the Attorney General's Open Government Hotline at 512-478-OPEN (6736) or toll-free

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at (877)-673-6839 (877-OPEN TEX). To obtain copies of the Public Information Handbook or Attorney General Opinions, please go to the Attorney General's website at www.oag.state.tx.us or call the Attorney General's Opinions Library at 512- 936-1730.

Sincerely,

Jo Ann Pate
Assistant City Attorney

Attachment

Copies to:

Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Mr. Isaiah X. Smith
Isaiah Smith Campaign
P O Box 163411
Fort Worth, Texas 76161

via electronic mail: iscampaign@usa.com

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