



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 5, 2016

Mr. James R. Palomo
Assistant District Attorney
Civil Division
County of Dallas
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2016-17633

Dear Mr. Palomo:

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# 621424.

Dallas County (the "county") received a request for information pertaining to the county's mosquito control activities and contractors related to such activities. You claim some of the submitted information is exempted from disclosure under sections 552.104, 552.110, and 552.137 of the Government Code.¹ You also state release of this information may implicate the proprietary interests of Vector Disease Control ("Vector"). Accordingly, you have notified Vector of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Although you raise section 552.110 of the Government Code for some of the submitted information, this exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepting from disclosure "[a]

¹Although you also raise section 552.101 of the Government Code, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained”). Thus, we do not address your argument under section 552.110. We also note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Vector. Thus, Vector has not demonstrated it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 county may not withhold the submitted information on the basis of any proprietary interests Vector may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the information you have marked “may be excepted from disclosure pursuant to section 552.104 of the Act because the information if released could give advantage to a competitive bidder for future competitive bidding requests by the county[.]” Thus, rather than asserting harm to its own interest, the county asserts harm to a competitive bidder. However, we note that such an interest in protecting the information from competitors belongs to Vector and not the county. Upon review, we find the county may not withhold any of the submitted information under section 552.104(a) 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). Gov’t Code § 552.137(a)-(c). Upon review, we find you have failed to demonstrate section 552.137 applies to any of the submitted information. Accordingly, the county may not withhold any of the submitted information under section 552.137.

Some of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 of the Government Code provides, “Notwithstanding any other provision

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).

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.” *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. Accordingly, the county must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

In summary, the county must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The county 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 621424

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)