



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2016

Mr. Greg Gilleland
First Assistant Criminal District Attorney
County of Bastrop
804 Pecan Street
Bastrop, Texas 78602

OR2016-28317

Dear Mr. Gilleland:

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# 639511.

The County of Bastrop (the "county") received a request for all responses to a specified request for proposals. 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 Acadian Ambulance Service of Texas, LLC ("Acadian"); American Medical Response of Texas, Inc. ("AMR"); and Powell Professional Services, LLC dba Guardian EMS ("Guardian"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights 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 received comments from Acadian. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Acadian argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the county has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information

requested). Accordingly, this ruling is limited to the information the county submitted as responsive to the request for information.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from AMR or Guardian explaining why the submitted information should not be released. Therefore, we have no basis to conclude AMR or Guardian has 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 county may not withhold the submitted information on the basis of any proprietary interest AMR or Guardian may have in the information.

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. Acadian states it has competitors. In addition, Acadian states the information at issue "reveals its operational plan" and release of this information "would favor Acadian's competitors in future bids[.]" After review of the information at issue and consideration of the arguments, we find Acadian has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold Acadian's information, which we have marked, under section 552.104(a) of the Government Code.¹

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."² Gov't Code § 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*

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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).

Open Records Decision No. 684 at 9 (2009). Accordingly, the county must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the county may withhold Acadian's information, which we have marked, under section 552.104(a) of the Government Code. The county must withhold the insurance policy numbers we have marked 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 639511

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)