



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 7, 2017

Mr. Brian S. Nelson  
General Counsel  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2017-12443

Dear Mr. Nelson:

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# 660817.

The Corpus Christi Independent School District (the "district") received a request for all bid responses, bid tabulations, and scoring sheets pertaining to a specified request for proposals. You state you released some information. 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 AT&T; Foremost Telecommunications Corporation ("Foremost"); Jive Communications, Inc. ("Jive"); and Time Warner Cable Business Class ("Time Warner"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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 received comments from Jive. We have reviewed the submitted information and considered the submitted arguments.

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 AT&T, Foremost, or Time Warner explaining why the submitted information should not be released. Therefore, we have no basis to conclude AT&T, Foremost, or Time Warner 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 district may not withhold the submitted information on the basis of any proprietary interest AT&T, Foremost, or Time Warner 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). 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. Jive states it has competitors. In addition, Jive states release of its pricing information would give an advantage to its competitors in future bids. After review of the information at issue and consideration of the arguments, we find Jive has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we marked under section 552.104(a) of the Government Code.

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.”<sup>1</sup> 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. Accordingly, the district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

We note some of the materials 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

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<sup>1</sup>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).

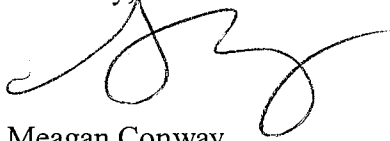
governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold the information we marked under section 552.104(a) of the Government Code. The district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The district must release the remaining information; however, any information that is 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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 Conway  
Assistant Attorney General  
Open Records Division

MC/sb

Ref: ID# 660817

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)