



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 22, 2018

Mr. Robert Scamardo  
General Counsel  
Department of Legal Services  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2018-04185

Dear Mr. Scamardo:

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# 697015 (ORR# 2017-18-275).

The Fort Bend Independent School District (the "district") received a request for all documents, except for the requestor's, related to a specified request for proposals. Although the district takes 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 Eleyo; FamilyID, Inc. ("FamilyID"); GTSoft, Inc.; Project Execution 4 U; and RevTrak, Inc. Accordingly, you state, and provide documentation showing, you notified these 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 FamilyID. We have considered the submitted arguments and reviewed the submitted information.

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 any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party 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 any remaining third party 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. FamilyID states it has competitors. In addition, FamilyID states “access to this proposal information by competitors to our business may result in substantial financial harm, and cause long-term impairment to our capability to compete in a fair manner[.]” After review of the information at issue and consideration of the arguments, we find FamilyID 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 entirety of FamilyID’s information 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. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the district must withhold the bank account numbers, bank routing numbers, and insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the district may withhold the entirety of FamilyID’s information under section 552.104(a) of the Government Code. The district must withhold the bank account numbers, bank routing numbers, and insurance policy numbers in the remaining information under section 552.136 of the Government Code. The district must release the remaining information.

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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).

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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/som

Ref: ID# 697015

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)