



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 29, 2019

Ms. Bhavani Madiseti-Vemireddy
Assistant County Attorney
Williamson County
405 Martin Luther King Street, Suite 7
Georgetown, Texas 78626

OR2019-00964A

Dear Ms. Madiseti-Vemireddy:

This office issued a letter to the County of Williamson (the "county") for ID# 745845 on January 11, 2019. Since that time, we have received new information that affects the facts on which this letter was based. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on January 11, 2019. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). Your request was assigned ID# 758780.

The county received a request for all submitted proposals, the awarded contract, and the evaluation materials for a specified bid. You claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.¹ Additionally, you state release of this information may implicate the proprietary interests of Alacriti; Certified Payments; Complus; First Billing; Gila; J. P. Morgan Chase Bank, N.A.; Paymentus; Tyler Technologies; Value Payment Systems; and Wells Fargo Bank, N.A. Accordingly, pursuant to section 552.305 of the Government Code, 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 id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely

¹Although the county raises sections 552.101 through 552.135 and 552.137 through 552.151 of the Government Code, it makes no arguments to support these exceptions. Therefore, we assume the county has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Paymentus. 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 county 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 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. Paymentus states it has competitors. In addition, Paymentus states disclosure of the information at issue would give advantage to a competitor. After review of the information at issue and consideration of the arguments, we find Paymentus has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold the information we have 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." 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 county must withhold the insurance policy numbers under section 552.136 of the Government Code.

We note some of the remaining information 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 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 county may withhold the information we have marked under section 552.104(a) of the Government Code. The county must withhold the insurance policy numbers under section 552.136 of the Government Code. The county must release the remaining information; however, any information protected by copyright may only be released 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, 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/gw

Ref: ID# 758780

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 9 Third Parties
(w/o enclosures)