



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 15, 2019

Ms. Sandra D. Carpenter
General Counsel
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR2019-01232

Dear Ms. Carpenter:

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# 744302 (Reference No. 219-135).

The Round Rock Independent School District (the "district") received a request for information pertaining to a specified request for proposals.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of the Houston Independent School District ("HISD"); Immanuel Medical Billing Services, Inc. ("Immanuel"); MSB Consulting ("MSB"); and the Texas Association of School Boards ("TASB"). Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released); 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

¹We note the district failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301 (e). Nonetheless, because third party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments against disclosure of the submitted information. *See id.* §§ 552.007, .302, .352.

exception in the Act in certain circumstances). We have received comments from TASB.² We have considered the submitted arguments and reviewed the submitted information.

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) of the Government Code 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 Immanuel or MSB explaining why the submitted information should not be released. Therefore, we have no basis to conclude Immanuel and MSB have protected proprietary interests 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 any portion of the submitted information on the basis of any proprietary interest Immanuel or MSB 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. TASB states it has competitors. In addition, TASB states the information at issue, if released, would give a competitor an advantage in submitting future competitive bids. TASB also states the release of the information would harm TASB's competitive interests and would reveal its pricing, the structure of its services, and the identity of a client to its competitor. After review of the information at issue and consideration of the arguments, we find TASB has established the release of the information it seeks to withhold 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(b) 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."³ Gov't

²As of the date of this letter, we have not received comments from HISD explaining why the submitted information should not be released.

³The 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).

Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the district must withhold the insurance policy number in the remaining information under section 552.136 of the Government Code.

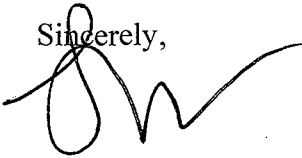
We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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 district may withhold the information we marked under section 552.104(a) of the Government Code. The district must withhold the insurance policy number in the remaining information under section 552.136 of the Government Code. The district must release the remaining information; however, any information subject to 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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 744302

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)