



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2019

Mr. Gabriel A. Rodriguez
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2019-01950

Dear Mr. Rodriguez:

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# 747257 (City File Nos. 1327 and 1411).

The City of Corpus Christi (the "city") received two requests from separate requestors for information pertaining to a specified request for proposals, including evaluations, scoring sheets, and vendor responses. The city claims the submitted information is excepted from disclosure under section 552.110 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of several third parties.¹ Accordingly, the city states, and provides documentation showing, it notified these third parties of the requests 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 § 552.305(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

¹The city informs us it notified the following third parties of the request: Aetna; Ameritas; ASI; BlueCross BlueShield of Texas ("BCBSTX"); Cigna; CVS; Dearborn National ("Dearborn"); Delta Dental; Entrust; Express Scripts; HealthcareHighways d/b/a CerpaxRx ("CerpaxRx"); Humana Insurance Company ("Humana"); Lincoln; MaxorPlus, LTD ("Maxor"); Magellan Healthcare; Metlife; Mutual of Omaha; Ochs; SA Benefit Services; Securian; Special Insurance Services; Stealth Partner Group; Symetra; The Standard Insurance Company; United Concordia Dental ("United Concordia"); United HealthCare Services, Inc. ("United HealthCare"); Unum; and WellDyneRx.

comments from BCBSTX, CerpaxRx, Dearborn, Delta Dental, Entrust, Humana, Maxor, United Concordia, and United HealthCare. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Dearborn, Delta Dental, and Entrust seek to withhold information the city did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, although the city contends the submitted information is excepted from disclosure under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See id.* § 552.110 (excepting from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained”). Therefore, we do not address the city's argument under section 552.110 of the Government Code.

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) 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from BCBSTX, CerpaxRx, Dearborn, Delta Dental, Entrust, Humana, Maxor, United Concordia, and United HealthCare explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have 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, 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. Therefore, the city may not withhold the submitted information on the basis of any proprietary interest the remaining third parties 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. BCBSTX, CerpaxRx, Dearborn, Delta Dental, Entrust, Humana, Maxor, United Concordia, and United HealthCare state they have competitors. In addition, BCBSTX, CerpaxRx, Dearborn, Delta Dental, Entrust, Humana, Maxor, United Concordia,

and United HealthCare state release of their information at issue would give their competitors an unfair advantage. After review of the information at issue and consideration of the arguments, we find BCBSTX, CerpasRx, Dearborn, Delta Dental, Entrust, Humana, Maxor, United Concordia, and United HealthCare have established the release of their information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the city may withhold the information BCBSTX and Humana indicated and the additional information we marked and indicated under section 552.104(a) of the Government Code.² However, although Entrust states release of some of the remaining information may give an advantage to competitors of Entrust, such an interest in protecting the information belongs to the remaining third parties and not Entrust. Therefore, the city may not withhold any of the remaining 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.” 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). Accordingly, the city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body[.]” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address contained in a response to a request for bids or proposals. *See id.* § 552.137(c)(3). Although BCBSTX raises section 552.137 for the e-mail addresses at issue, we find these e-mail addresses are specifically excluded by section 552.137(c)(3). *See id.* Therefore, the city may not withhold any portion of the remaining information under section 552.137 of the Government Code.

Delta Dental and Maxor assert, and we agree, some of their information may be protected by copyright. Additionally, we note some of the remaining information 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 governmental body. In making copies, the member of the

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information

public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may withhold the information BCBSTX and Humana indicated and the additional information we marked and indicated under section 552.104(a) of the Government Code. The city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 747257

Enc. Submitted documents

c: Requestor
(w/o enclosures)

28 Third Parties
(w/o enclosures)