



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2019

Ms. Anna Robshaw
Counsel for the Huffman Independent School District
Thompson & Horton, LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7554

OR2019-04345

Dear Ms. Robshaw:

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# 750198.

The Huffman Independent School District (the "district"), which you represent, received a request for specified contracts between the district and Bond Program Management Services ("BPMS") and the district's check registers for payments during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.136 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of BPMS. Accordingly, you state, and provide documentation showing, you notified BPMS of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the

Initially, we note some of the submitted information, which we indicated, is not responsive to the present request for information because it does not consist of the requested contracts between the district and BPMS. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release such information in response to this request.²

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from BPMS explaining why the submitted responsive information should not be released. Therefore, we have no basis to conclude BPMS has a protected proprietary interest in the information at issue. *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 responsive information on the basis of any proprietary interest BPMS may have in the information.

Next, we note the submitted responsive information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted responsive information consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). Thus, the district must release

extent those records contain substantially different types of information than that submitted to this office.

²As we are able to make this determination, we need not address your argument against disclosure of this information.

this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although the district seeks to withhold the information at issue under section 552.103 of the Government Code, this section is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the district may not withhold the submitted responsive information under section 552.103. However, because section 552.136 of the Government Code makes information confidential for purposes of section 552.022, we will consider your argument under this exception for the submitted responsive information.

You assert portions of the responsive information are subject to section 552.136 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We note check numbers and invoice numbers do not constitute access device numbers for the purposes of section 552.136. Upon review, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to any of the information at issue, and the district may not withhold any portion of the submitted responsive information on that basis.

We note some of the submitted responsive information appears to 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.

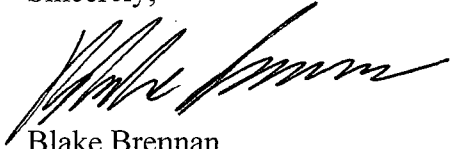
In summary, the district must release the submitted responsive information pursuant to section 552.022(a)(3) of the Government Code; however, any information protected by copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read "Blake Brennan", written in a cursive style.

Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 750198

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)