



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 28, 2019

Mr. Donnie Marek  
Executive Director of Risk Management  
Alvin Independent School District  
301 East House Street  
Alvin, Texas 77511

OR2019-08547

Dear Mr. Marek:

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# 756958.

The Alvin Independent School District (the "district") received a request for information pertaining to a specified request for proposals. The district states it has no information responsive to portions of the request.<sup>1</sup> The district also states release of the submitted information may implicate the proprietary interests of Aetna; Blue Cross Blue Shield of Texas ("BCBSTX"); Cigna; and United HealthCare Services, Inc. ("United").<sup>2</sup> Accordingly, the district states it notified each third party of the request for information and of its right to

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See Gov't Code* § 552.301(e). Nonetheless, as the interests of third parties can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352. Additionally, we note BCBSTX contends the district failed to notify certain third parties of the request for information pursuant to section 552.305(d) of the Government Code. *See Gov't Code* § 552.305(d) (providing that "[i]f release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision."). However, the district does not inform us, nor can we discern, these third parties' proprietary interests would be implicated by the public release of the information at issue. Thus, we find this is not an instance where the district is required to notify these third parties pursuant to section 552.305 of the Government Code.

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 Aetna, BCBSTX, and United. We have reviewed the submitted information and the submitted arguments.

Initially, 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) 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 Cigna explaining why its information at issue should not be released. Therefore, we have no basis to conclude Cigna has a protected proprietary interest in its information at issue, and the district may not withhold any portion of it on that basis. *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.

United asserts all of its information at issue is protected under section 552.104 of the Government Code. Aetna and BCBSTX assert portions of their information are protected under section 552.104 of the Government Code. Section 552.104(a) 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. Aetna, BCBSTX, and United state they have competitors. In addition, Aetna, BCBSTX, and United state release of their information at issue would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Aetna, BCBSTX, and United have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold all of United's information and the information Aetna and BCBSTX marked or indicated under section 552.104(a) of the Government Code.<sup>3</sup>

We note the remaining documents include information that is subject to section 552.136 of the Government Code.<sup>4</sup> Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>4</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).

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. Open Records Decision No. 684 at 9 (2009). Accordingly, the district must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

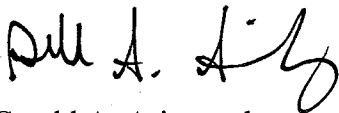
Additionally, we note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection 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 public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold all of United’s information and the information Aetna and BCBSTX marked or indicated under section 552.104(a) of the Government Code. The district must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The district must release the remaining information; however, any information that is subject to copyright may be released only 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](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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/gw

Ref: ID# 756958

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 4 Third Party  
(w/o enclosures)