



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2019-10455

Dear Ms. Sheely:

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# 760326.

The Travis County Purchasing Office (the "purchasing office") received a request for all responses to a specified request for proposals. Although the purchasing office takes no position as to whether the submitted information is excepted under the Act, the purchasing office states release of the submitted information may implicate the proprietary interests of Altametrics, LLC; Breitenbach US Software Engineering, Inc.; Care Systems, Inc. ("Care"); Data Management, Inc. d/b/a TimeClock Plus; eResourcePlanner, Inc.; IntelliTime Systems Corporation; inTime Solutions, Inc.; Kronos Incorporated; ScheduleSource; and WorkForce Software, LLC ("WorkForce"). Accordingly, the purchasing office states, and provides documentation showing, it notified each third party 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(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 Care and WorkForce. 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 of the remaining third parties explaining why their information at issue should not be released. Accordingly, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information, and the purchasing office 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.

Care asserts all of its information at issue is protected under section 552.104 of the Government Code. WorkForce asserts some of its information is 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. Care and WorkForce state they have competitors. In addition, Care and WorkForce 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 Care and WorkForce have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the purchasing office may withhold the information of Care and WorkForce we have indicated under section 552.104(a) of the Government Code.¹

Next, WorkForce states portions of its remaining information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects “[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[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

WorkForce asserts portions of its information consist of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find WorkForce has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause

¹As our ruling is dispositive, we need not address Care’s remaining arguments against disclosure of this information.

substantial competitive injury. Accordingly, the purchasing office must withhold this information, which we have indicated, under section 552.110(b) of the Government Code.²

Additionally, WorkForce asserts some of its remaining information is protected under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual’s name and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy). Upon review, we find WorkForce has not demonstrated any of the information it marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the purchasing office may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining documents include information that is subject to section 552.136 of the Government Code.³ 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. Open Records Decision No. 684 at 9 (2009). Accordingly, the purchasing office must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

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

²As our ruling is dispositive, we need not address WorkForce’s remaining argument against disclosure of this information.

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).

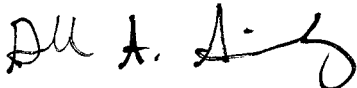
wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the purchasing office may withhold the information of Care and WorkForce we have indicated under section 552.104(a) of the Government Code. The purchasing office must withhold the information we have indicated under section 552.110(b) of the Government Code. The purchasing office must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The purchasing office 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, 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/eb

Ref: ID# 760326

Enc. Submitted documents

c: Requestor
(w/o enclosures)

10 Third Parties
(w/o enclosures)