



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2019

Mr. Joseph Behnke
Assistant General Counsel
Office of the Governor of the State of Texas
P.O. Box 12428
Austin, Texas 78711

OR2019-12588

Dear Mr. Behnke:

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# 764659 (ORR# 078-19).

The Office of the Governor (the "governor's office") received a request for documents released to two named individuals pursuant to a specified request for information under the Act. The requestor additionally seeks communications between the governor's office, the Office of the Attorney General, and third parties concerning the governor's office's prior request for ruling on information responsive to the specified request for information. Although the governor's office takes no position as to whether the submitted information is excepted under the Act, the governor's office states release of the submitted information may implicate the proprietary interests of Apple, Inc. ("Apple"), and Charles Schwab & Co., Inc. ("Schwab"). Accordingly, the governor's office states, and provides documentation showing, it notified Apple and Schwab of the request for information and of the 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 Apple and Schwab. We have reviewed the submitted arguments and the submitted information.

Initially, the governor's office states some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-07128A (2018). The governor's office states there has been no change in the law, facts, or circumstances on which Open Records Letter No. 2018-07128A were based. Accordingly, the governor's office must rely on Open Records Letter No. 2018-07128A as a previous determination and release withhold or release the identical information in accordance with that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the governor's office has submitted additional information that is responsive to the instant request but has not been ruled on by this office. Accordingly, we will consider the public availability of this 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. Apple states it has competitors. In addition, Apple states release of some of its information, which it highlighted, would cause harm to its competitive interests and would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Apple has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the governor's office may withhold the information Apple highlighted under section 552.104(a) of the Government Code.²

Some of the remaining information is subject to section 552.136 of the Government Code.³ Section 552.136 provides, "Notwithstanding 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. Accordingly, the

¹Awe are able to make this determination, we need not address Schwab's arguments against disclosure of the information at issue.

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

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).


governor's office must withhold the routing and bank account numbers within the remaining information under section 552.136 of the Government Code.

In summary, the governor's office must rely on Open Records Letter No. 2018-07128A as a previous determination and release withhold or release the identical information in accordance with that ruling. The governor's office may withhold the information Apple highlighted under section 552.104 of the Government Code. The governor's office must withhold the routing and bank account numbers within the remaining information under section 552.136 of the Government Code. The governor's office must release the remaining information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 764659

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)