



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 17, 2019

Ms. Lisa K. Hargrove
General Counsel
Houston First Corporation
701 Avenida de las Americas, Suite 200
Houston, Texas 77010

OR2019-16376

Dear Ms. Hargrove:

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# 771168.

The Houston First Corporation (the "corporation") received four requests from different requestors for information pertaining to a specified request for proposals, including the proposals submitted. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of AEPS Corporation ("AEPS"); Allied Universal Security Services ("Allied"); Andy Frain Services, Inc.; Blue Knight Security LLC; Blue Star Security; Certified Security Plus; Champion National Security ("Champion"); Congregational Security Inc.; DSI Security Services; Elite Protective Services; G4S Secure Solutions USA Inc.; Idea Security Services; ISS Actions Inc; Jaguar Security; Monterrey Security; Morgan Security Services; PalAmerican Security; Rankin & Mato Management Firm; Securitas Security Services USA, Inc; Sunstates Security LLC; United Security Service Inc.; and Vets Securing America. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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 AEPS, Allied, and Champion. 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 the remaining third parties explaining why the information at issue should not be released. Therefore, we have no basis to conclude any other third party 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 corporation may not withhold any portion of the remaining information on the basis of any proprietary interest the remaining third parties may have in it.

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. Allied, AEPS, and Champion state their businesses have competitors. In addition, each states release of the information at issue would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Allied, AEPS, and Champion have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we marked under section 552.104(a) of the Government Code.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² 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

¹As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App—Austin May 22, 2015, pet. denied) (mem. op.).

Upon review, we find the remaining information contains dates of birth. However, we are unable to determine whether the information at issue pertains to actual living individuals or fictitious individuals created as a sample for purposes of responding to the corporation's request for proposals. Therefore, we must rule conditionally. To the extent the dates of birth pertain to real, living individuals, the corporation must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue does not pertain to real, living individuals, the corporation may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 government body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). We note the remaining information contains insurance policy numbers. However, we are unable to determine whether the information at issue contains actual insurance policy numbers for purposes of 552.136 or whether it is fictitious information created for the purposes of the proposal. Accordingly, to the extent the information at issue consists of real insurance policy numbers, the corporation must withhold all marked insurance policy under section 552.136 of the Government Code.

We note some of the remaining information 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 corporation may withhold the information we have marked and indicated under section 552.104(a) of the Government Code. To the extent the dates of birth pertain to real, living individuals, the corporation must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information at issue consists of real insurance policy numbers, the corporation must withhold this information, which we marked, under section 552.136 of the Government

Code. The corporation 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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 771168

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

22 Third Parties
(w/o enclosures)