



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 9, 2019

Mr. Jennifer Smith
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2019-18573

Dear Ms. Smith:

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# 774196 (2019-0060-DA.SO).

Hidalgo County (the "county") received a request for two specified contracts and invoices pertaining to those contracts. You state the county has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the following third parties: Bob Barker Co.; ICS Jail Supplies; Keefe Group; R&R Distributing; and Securus Technologies, Inc. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 considered the submitted argument and reviewed the submitted information.

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 any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have a protected proprietary interest in the submitted information. *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 county may not withhold the submitted information on the basis of any proprietary interest any of the third parties may have in the 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). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You state the information submitted as Exhibit D relates to a contract for services and the county seeks bids for these services on a recurring basis. Further, you state release of the information at issue would allow competitors to undercut future bids and unfairly disadvantage the county in securing favorable contracts for these services. After review of the information at issue and consideration of the arguments, we find the county has established release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the county may withhold Exhibit D under section 552.104(a) of the Government Code.

We note some of the remaining information is subject to section 552.136 of the Government Code.¹ Section 552.136 states that “[n]otwithstanding any other provision of this chapter, 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. This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, we find the county must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.


In summary, the county may withhold Exhibit D under section 552.104(a) of the Government Code. The county must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The county 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 774196

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 5 Third Parties
(w/o enclosures)