



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2019

Mr. Windford Adams, Jr.
Public Information Manager
Harris County Department of Education
6300 Irvington Boulevard
Houston, Texas 77022

OR2019-19023

Dear Mr. Adams:

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# 775292 (ORR# P001523-042219).

The Harris County Department of Education (the "department") received a request for a specified censure resolution, a specified contract, and certain responses pertaining to a specified request for qualifications. The department states it will release some of the requested information. Although the department takes no position regarding whether the submitted information is excepted from disclosure under the Act, the department informs us its release may implicate the proprietary interests of several third parties.¹ Accordingly, the department states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office. *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

¹The department informs us it notified the following interested third parties of the request: Clark Hill Strasburger ("CHS"); Edwards Sutarwalla, PLLC; Eichelbaum Wardell Hansen Powell & Mehl; Gary Polland, P.C.; Greenberg Traurug LLP; Karczewski Bradshaw Spalding Nichols Lamp Langlois ("KBS"); O'Hanlon, Demerath & Castillo; Paul J. Coselli, Attorney at Law; Powell-Leon, LLP; Rogers, Morris & Grover, LLP; Schulman, Lopez, Hoffer & Adelstein, LLP ("SLHA"); Strahan Cain, PLLC ("StrahanCain"); The Carmona Firm, PLLC; and Walsh Gallegos Treviño Russo & Kyle P.C. ("Walsh Gallegos").

comments from CHS, KBS, SLHA, StrahanCain, and Walsh Gallegos. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note SLHA only seeks to withhold information the department did not submit for our review. Additionally, we note Walsh Gallegos seeks to withhold information the department did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from CHS, KBS, SLHA, StrahanCain, and Walsh Gallegos explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining 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, 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. Therefore, the department may not withhold the submitted information on the basis of any proprietary interest the remaining 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. CHS, KBS, StrahanCain, and Walsh Gallegos state they have competitors. In addition, these third parties explain release of the information they indicated would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we find CHS, KBS, StrahanCain, and Walsh Gallegos have established the release of the information at issue would give an advantage to a competitor or bidder. Accordingly, we

conclude the department may withhold the information we marked under section 552.104(a) of the Government Code.²

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.”³ 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. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the insurance account and policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information 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 department may withhold the information we marked under section 552.104(a) of the Government Code. The department must withhold the insurance account and policy numbers within the remaining information under section 552.136 of the Government Code. The department must release the remaining information; however, any information subject to 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.

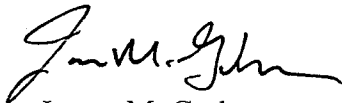
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²As our ruling is dispositive, we need not address the remaining arguments 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).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Graham". The signature is fluid and cursive, with the first name "James" being the most prominent.

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 775292

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: 14 Third Parties
(w/o enclosures)