



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P. O. Box 1152
Midland, Texas 79702-1152

OR2019-19236

Dear Mr. Toulet:

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# 775276 (#M026425-042219).

The City of Midland (the "city") received a request for information pertaining to request for proposals 18001247, including the contract. You claim some of the requested information is exempted from disclosure under sections 552.101 and 552.104 of the Government Code. The city states release of some of the submitted information may implicate the proprietary interests of a third party. Accordingly, the city also states, and provides documentation showing, it notified Action Wrecker Service, Inc. ("Action Wrecker") of the city's receipt of the request for information and of the right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 Action Wrecker. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts,

deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), aff’d in part, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the submitted 1099-MISC forms, W-2 forms, and 1120 forms constitute tax return information that is confidential under section 6103(a). Accordingly, the city must withhold the submitted 1099-MISC forms, W-2 forms, and 1120 forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. However, we find none of the remaining information in Exhibit B falls within the definition of “tax return information.” As such, the city may not withhold any of the remaining information in Exhibit B under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

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). The city informs us Exhibit D consists of “bidding and contract documents” that were used to obtain contracts with the city. The city asserts Exhibit D is excepted from release under section 552.104 because “disclosure of this information would provide the requestor, or a third party[,], with an advantage if either should decide to submit a bid to provide the [c]ity with similar goods and services in the future.” Upon review, we find the city has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Exhibit D under section 552.104(a) of the Government Code.

Action Wrecker states it has competitors. In addition, Action Wrecker states release of the information it seeks to withhold would put Action Wrecker at a competitive disadvantage. After review of the information at issue and consideration of the arguments, we find Action Wrecker has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude city may withhold the information we indicated under section 552.104(a) of the Government Code.

We note some of the remaining information is subject to sections 552.130 and 552.136 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or

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

country. See Gov't Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the submitted vehicle identification numbers under section 552.130 of the Government Code.

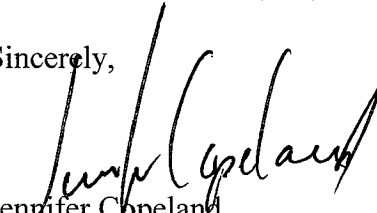
Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the city must withhold the submitted 1099-MISC forms, W-2 forms, and 1120 forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city may withhold Exhibit D and the information we indicated under section 552.104 of the Government Code. The city must withhold the submitted vehicle identification numbers under section 552.130 of the Government Code. The city must withhold the bank account and routing numbers in the remaining information under section 552.136 of the Government Code. The city 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 775276

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)