



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 23, 2019

Ms. Rosa Miranda Smith  
Public Information Officer  
Irving Independent School District  
3620 Valley View  
Irving, Texas 75062

OR2019-20059

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# 777262 (ORR# I000679).

The Irving Independent School District (the "district") received a request for information related to renovations to the baseball field at a specified district school. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of Hellas Construction, Inc. ("Hellas"), and Glenn Engineering Corporation ("Glenn").<sup>1</sup> Accordingly, the district states, and provides documentation showing, it notified Hellas and Glenn 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

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<sup>1</sup>The district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

of exception in the Act in certain circumstances). We have received comments from Hellas and Glenn.<sup>2</sup> We have reviewed the submitted arguments and the submitted information.

Initially, we note Hellas argues against the release of information that was not submitted by the district. This ruling does not address information that was not submitted by the district and is limited to the information the district has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. Hellas states it has competitors. In addition, Hellas states release of the information at issue would provide an advantage to its competitors and would cause substantial harm to Hellas’s competitive position. After review of the information at issue and consideration of the arguments, we find Hellas has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Hellas’s information at issue, which we marked, under section 552.104(a) of the Government Code.<sup>3</sup>

Some of the remaining information is subject to section 552.136 of the Government Code.<sup>4</sup> Section 552.136 of the Government Code 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 district must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the materials 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

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<sup>2</sup>We note Glenn does not claim any exception to release of the submitted information and does not indicate it has any objection to release of the information.

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

<sup>4</sup>The 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).

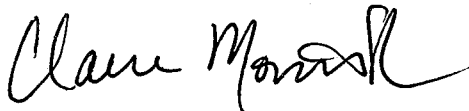
must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold Hellas's information we marked under section 552.104(a) of the Government Code. The district must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The district must release the remaining information; however, any information that is subject to copyright may be released only 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](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/mo

Ref: ID# 777262

Enc. Submitted documents

c: 3 Requestor  
(w/o enclosures)