



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 4, 2019

Mr. Tillman S. Roots
Assistant District Attorney
Comal County
150 North Seguin Avenue, Suite 307
New Braunfels, Texas 78130-5161

OR2019-24747

Dear Mr. Roots:

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# 783802 (Ref. No. 19OR-059).

Comal County (the "county") received a request for proposals and scoresheets pertaining to a specified request for proposals ("RFP"). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The County Purchasing Act, Local Government Code chapter 262, subchapter C, generally requires counties to make certain purchases using competitive bidding. Section 262.0295 provides an alternative multistep competitive proposal procedure. *See* Local Gov't Code § 262.0295. Section 262.0295(d) reads as follows:

Within 30 days after the date the unpriced proposals are opened under Subsection (c), the county official shall present the priced bids to the commissioners court. The award of the contract shall be made to the responsible offeror whose bid is determined to be the lowest and best evaluated offer resulting from negotiation. All proposals

and bids that have been submitted shall be available and open for public inspection after the contract is awarded.

Id. § 262.0295(d). You state no contract has been awarded for the specified RFP, and, thus, the submitted information is confidential under section 292.0295(d). We note, however, that section 292.0295(d) does not expressly make information confidential for the purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998), 649 at 3 (1996) (language of confidentiality provision controls scope of protection), 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public), 465 at 4-5 (1987). Confidentiality cannot be implied from the structure of a statute or rule. *See* Open Records Decision No. 465 at 4-5 (1987). Therefore, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 262.0295 of the Local 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.”¹ 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 county must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. 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 county must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The county 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.

¹ 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).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jxd

Ref: ID# 783802

Enc. Submitted documents

c: Requestor
(w/o enclosures)