



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 17, 2019

Ms. Brittany Rodriguez  
Office Assistant  
Procurement Services  
City of Dallas  
1500 Marilla Street, Room 3FN  
Dallas, Texas 75201

OR2019-26081

Dear Ms. Rodriguez:

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# 786351 (Reference Nos. C00593-062719, C006558-071619, C006634-071819, and C006671-071919).

The City of Dallas (the "city") received four requests for information pertaining to a specified request for qualifications. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Bibliotheca, L.L.C. ("Bibliotheca"); EnvisionWare, Inc. ("Envisionware"); Invengo Technology Corporation; Mk Solutions Systems, Inc. ("Mk Solutions"); P.V. Supa Inc.; and Tech Logic Solutions Corporation ("Tech Logic"). Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 received comments from Bibliotheca, Envisionware, Mk Solutions, and Tech Logic. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the third requestor does not seek scoring information. Accordingly, this information is not responsive to the third request for information. The city need not release information to the third requestor that is not responsive to his request.

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) 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests 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 city may not withhold any portion of 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). 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. Envisionware, Mk Solutions, and Tech Logic state they have competitors. In addition, Envisionware, Mk Solutions, and Tech Logic state the information at issue, if released, would give a competitor an advantage in submitting future competitive bids. After review of the information at issue and consideration of the arguments, we find Envisionware, Mk Solutions, and Tech Logic have established the release of the information they seek to withhold would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Envisionware's pricing information and the information we marked under section 552.104(a) of the Government Code.<sup>1</sup>

Bibliotheca claims portions of its information are excepted under section 552.110 of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also ORD 661 at 5-6.

Bibliotheca contends some of its information is commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find Bibliotheca has demonstrated its pricing information constitutes commercial or financial information, the release of which would cause substantial competitive injury.

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Accordingly, the city must withhold Bibliotheca's pricing information under section 552.110(b) of the Government Code.<sup>2</sup>

Mk Solutions also raises section 552.102(a) of the Government Code for some of the remaining information. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). We understand Mk Solutions to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. Section 552.101 of the Government Code encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find the remaining information does not contain information protected under section 552.102(a) of the Government Code. Accordingly, no portion of the remaining information may be withheld on that basis.

Section 552.136(b) 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."<sup>3</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Open Records Decision No. 684 (2009). Accordingly, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information 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

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<sup>2</sup>As our ruling is dispositive, we need not address Bibliotheca's remaining argument against disclosure of this information.

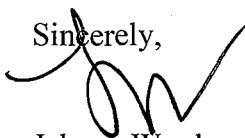
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 city may withhold Envisionware's pricing information and the information we marked under section 552.104(a) of the Government Code. The city must withhold Bibliotheca's pricing information under section 552.110(b) of the Government Code. The city must withhold the insurance policy numbers under section 552.136 of the Government Code. The city 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 <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,  


Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/eb

Ref: ID# 786351

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)