



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2019

Ms. Kristi Godden
Legal Counsel to Hidalgo Independent School District
O'Hanlon, Demerath & Castillo
808 West Avenue
Austin, Texas 78701

OR2019-27895

Dear Ms. Godden:

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# 789256 (HISD-19-015).

The Hidalgo Independent School District (the "district") received a request for information related to a specified bid tabulation and scoring report. The district does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the district states, and provides documentation showing, it notified Compass Bank, Frost Bank, and Lone Star National Bank ("Lone Star") of the district's receipt of the request for information and of their 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 received comments on behalf of Lone Star. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 district may not withhold any portion of the submitted information related to those third parties on the basis of any proprietary interest they may have in the information.

Section 552.104(a) 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. Lone Star states it has competitors. Lone Star also states the information at issue, if released, would give advantage to a competitor or bidder. After review of the information at issue and consideration of the arguments, we find Lone Star has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we indicated under section 552.104(a) of the Government Code.¹

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.” 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). Thus, the district must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the information at issue appears to 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 district may withhold the information we indicated under section 552.104(a) of the Government Code. The district must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The

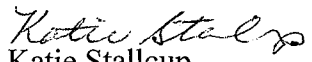
¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

district must release the remaining information; however, the district may only release any information subject to copyright 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,


Katie Stallcup
Attorney
Open Records Division

AKS/eb

Ref: ID# 789256

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)