



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2019

Mr. Rene Flores  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2019-27983

Dear Mr. Flores:

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# 789898 (EPC File No. OP-19-734).

El Paso County (the "county") received a request for five categories of information pertaining to a specified contract with Harris & Harris, Ltd. ("Harris") and services performed pursuant to the contract. The county states it has released some information to the requestor. The county informs us it has no information responsive to a portion of the request.<sup>1</sup> The county claims some of the submitted information is excepted from disclosure under section 552.136 of the Government Code.<sup>2</sup> Additionally, the county states release of the submitted information may implicate the proprietary interests of Harris. Accordingly, the county states, and provides documentation showing, it notified Harris of the request for information and of its 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 of exception in the

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> Although the county also cites to sections 552.101, 552.110, 552.113, and 552.130 of the Government Code, the county has not provided any arguments to support these exceptions. Therefore, we assume the county has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

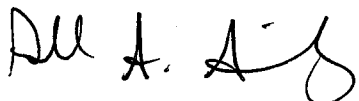
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Harris explaining why the submitted information should not be released. Accordingly, we have no basis to conclude Harris has a protected proprietary interest in the submitted information, and the county may not withhold any portion of it on that basis. *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.

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"). Therefore, the county must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code. However, no portion of the remaining information constitutes access device numbers subject to section 552.136, and the county may not withhold any of the remaining information on this basis. Accordingly, the county 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 <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,



Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/jxd

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)