



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 22, 2019

Ms. Alicia K. Kreh
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2019-29778

Dear Ms. Kreh:

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# 792664.

The Town of Flower Mound (the "town"), which you represent, received two requests for information pertaining to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the following third parties: Perdue, Brandon, Fielder, Collins & Mott, LLP; Sawko & Burroughs, P.C.; and Linebarger, Goggan, Blair & Sampson, LLP. Accordingly, you state, and provide documentation showing, the town notified these third parties of the request for information and of their 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 Act in certain circumstances). We have reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-19248 (2019). We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the town must rely on Open Records Letter No. 2019-19248 (2019)

and release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely the same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the town has submitted additional information that is responsive to the instant request that has not been ruled on by this office. Accordingly, we will consider the public availability of this information.

Next, 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) 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 any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest 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 town may not withhold the submitted information on the basis of any proprietary interest any third party may have in the information.

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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device").¹ This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the town must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

In summary, the town must rely on Open Records Letter No. 2019-19248 as a previous determination and release the identical information in accordance with that ruling. The town must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The town 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.

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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 792664

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)