



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 28, 2019

Mr. Brian O'Reilly  
Counsel for the North Texas Tollway Authority  
Locke & Lorde, LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701

OR2019-30286

Dear Mr. O'Reilly:

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# 793418 (NTTA Request ID NO. 2019-02266).

The North Texas Tollway Authority (the "authority"), which you represent, received a request for information pertaining to a specified request for proposals. You state the authority will release some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of Credit Protection Association ("CPA") and Professional Account Management, LLC ("PAM"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and of their right to submit arguments to this office. *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 both CPA and PAM. We have considered the submitted arguments and reviewed the submitted 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). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. CPA and PAM state they have competitors. Further, CPA and PAM state release of their information at issue would provide their competitors an advantage. CPA and PAM further seek to withhold some of the terms of contracts with the authority. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 839, 842. After review of the information at issue and consideration of the arguments, we find CPA and PAM established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the authority may withhold the information we indicated under section 552.104(a) of the Government Code.<sup>1</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> *See* Gov’t Code § 552.130. Accordingly, the authority must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has held that insurance policy numbers are access device numbers. *See* Open Records Decision No. 684 (2009). Accordingly, the authority must withhold all account numbers and insurance policy numbers in the remaining information under section 552.136 of the Government Code.

Next, we note CPA asserts some of the remaining information is protected by section 552.137 of the Government Code. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public

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

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). However, section 552.137 does not apply to e-mail addresses contained in a response to a request for bids or proposals. *See id.* § 552.137(c)(3). Upon review, we find the e-mail addresses at issue are specifically excluded by section 552.137(c)(3). *See id.* Thus, the authority may not withhold any portion of the remaining information under section 552.137.

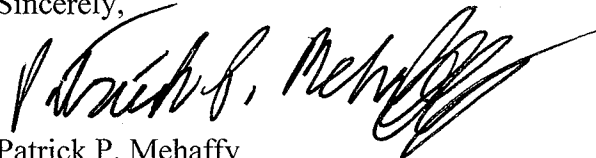
We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection 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 authority may withhold the information we indicated under section 552.104 of the Government Code. The authority must withhold the motor vehicle information we indicated under section 552.130 of the Government Code. The authority must withhold all account numbers and insurance policy numbers in the remaining information under section 552.136 of the Government Code. The authority 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,



Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/be

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)