



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 30, 2020

Mr. Michael Ewing  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2020-02862

Dear Mr. Ewing:

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# 809432.

The Employees Retirement System of Texas (the "system") received a request for information pertaining to a named entity. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. In addition, you state the release of the submitted information "would seriously harm [the system's] ability to competitively evaluate and contract with the best-qualified vendor." After review of the information at issue and consideration of the arguments, we find the system has established the release of some of the information at issue, which we marked, would give advantage to a competitor or bidder. However, we find the system has failed to establish the remaining information

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

would give advantage to a competitor or bidder. Thus, the system may not withhold any of the remaining information under section 552.104(a) of the Government Code.

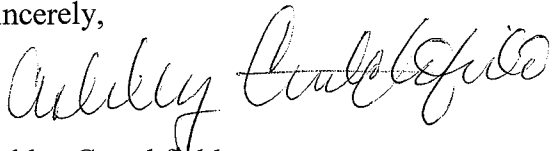
However, we note the submitted information contains insurance policy numbers. Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”<sup>2</sup> *Id.* § 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. *See* Open Records Decision No. 684 at 9 (2009). Thus, the system must withhold the insurance policy number in the remaining information under section 552.136 of the Government Code.

In summary, the system may withhold the information we marked under section 552.104 of the Government Code. The system must withhold the insurance policy number in the remaining information. The system 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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/be

Ref: ID# 809432

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</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).