



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 25, 2020

Ms. Ingrid Gunter
Paralegal
Lewisville Independent School District
1565 West Main Street
Lewisville, Texas 75067

OR2020-09172

Dear Ms. Gunter:

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# 819284 (LISD ID 1920-111).

The Lewisville Independent School District (the "district") received a request for the bid tabulation pertaining to request for proposals 2617-19 and the proposals submitted by two specified companies. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of Caldwell County Chevrolet; Door 2 Door School Shuttle, LLC; Grapevine CDJ, LLC; Longhorn Bus Sales; Randall Reed's Prestige Ford; and Rush Bus Centers-Selma. Accordingly, the district states, and provides documentation showing, it notified each third party 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 Act in certain circumstances). We have reviewed the submitted information.¹

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) to submit its reasons,

¹ We note the submitted information includes information pertaining to the requestor's company. As we assume the requestor does not seek access to the requestor's own information, we do not address the public availability of that information.

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 of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties has a protected proprietary interest in the submitted information, and the district 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 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the district must withhold all public citizens' dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, “Notwithstanding 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. Accordingly, the district must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the district must withhold all public citizens' dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold all insurance policy numbers in the remaining information under section 552.136 of the Government Code. The district 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.

² 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).

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/be

Ref: ID# 819284

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)