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ATTORNEY GENERAL OF TEXAS

March 31, 2020

Mr. David F. Brown
Counsel for the Port of Houston Authority
Ewell, Brown, Blanke & Knight, L.L.P.
111 Congress Avenue, 28th Floor
Austin, Texas 78701

OR2020-09887

Dear Mr. Brown:

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# 819375.

The Port of Houston Authority (the “authority”), which you represent, received a request for a specified contract. Although the authority takes no position as to whether the submitted information is excepted under the Act, the authority states release of the submitted information may implicate the proprietary interests of Archer Western Construction, LLC (“Archer Western”). Accordingly, the authority states, and provides documentation showing, it notified Archer Western of the request for information and of the 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 received comments from Archer Western. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ 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,

¹ 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).

2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the authority must withhold the public citizen’s date of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Archer Western raises section 552.110 of the Government Code for portions of the submitted contract. Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” See Gov’t Code § 552.110(b); see also *id.* § 552.110(a) (defining trade secret). Section 552.110(c) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is [excepted from required disclosure]. *Id.* § 552.110(c). Section 552.0222(b)(3) of the Government Code provides, in relevant part:

(b) The exceptions to disclosure provided by Sections 552.110 and 552.1101 do not apply to the following types of contracting information:

...

(3) the following contract or offer terms or their functional equivalent:

(A) any term describing the overall or total price the governmental body will or could potentially pay, including overall or total value, maximum liability, and final price; [and]

(B) a description of the items or services to be delivered with the total price for each if a total price is identified for the item or service in the contract[.]

Id. § 552.0222(b)(3)(A), (B). Archer Western argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find Archer Western has demonstrated a portion of the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the authority must withhold the information we marked under section 552.110(c) of the Government Code.² However, the remaining information at issue is subject to section 552.0222(b)(3) and the authority may not withhold that information on the basis of section 552.110(b) or 552.110(c). See *id.* § 552.0222(b) (listing certain types of information not excepted under section 552.110).

Some of the remaining information is subject to section 552.136 of the Government Code. 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,

² As our ruling is dispositive, we need not address your remaining argument against disclosure under section 552.110(b) of the Government Code for this information.

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 determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the authority must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

In summary, the authority must withhold the submitted public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The authority must withhold the information we marked under section 552.110(c) of the Government Code. The authority must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The remaining information must be released.

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,

Michelle Garza
Attorney
Open Records Division

MRG/eb

Ref: ID# 819375

Enc. Submitted documents

c: Requestor
(w/o enclosures)