



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 2, 2020

Ms. Courtney R. Kelly  
Public Information Assistant Coordinator  
Dallas Independent School District  
9400 North Central Expressway  
Dallas, Texas 75231

OR2020-10162

Dear Ms. Kelly:

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# 819934 (ORR# R019148-010920).

The Dallas Independent School District (the "district") received a request for certain contracts or invoices during specified time periods. The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of several third parties.<sup>1</sup> Accordingly, the district states, and provides documentation showing, it notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Kerrville. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> The district informs us it notified the following interested third parties of the request: City United Bus, Inc.; Corporate Services International; Cowtown Bus Charters, Inc.; Directors Choice; Game Time Transportation, LLC; Kerrville Bus Company, Inc. ("Kerrville"); LL&L Enterprise, LLC; Roadrunner Charters; Transportation Unlimited, Inc.; Wynne Motor Coaches, LLC; and Youth on the Move.

Initially, we note Kerrville seeks to withhold information the district did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Kerrville explaining why the information at issue should not be released. Thus, we have no basis to conclude the remaining third parties have 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, 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. Therefore, the district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104 of the Government Code excepts from public disclosure information "if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." Gov't Code § 552.104(a) (emphasis added). 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). The district seeks to withhold the submitted information under section 552.104. After review of the information at issue and consideration of the arguments, we find the district has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the district may not withhold the submitted information under section 552.104(a) of the Government Code.

Kerrville also asserts 552.104 for portions its information. Kerrville relies, in part, on the decision announced in *Boeing*, 466 S.W.3d 831, in which the court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See id.* at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code 552.104(a). Therefore, we do not address Kerrville's arguments under section 552.104 for the information at issue.

Kerrville also raises section 552.110 of the Government Code for a portion of its information. Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Section 552.110(c) of the Government Code states:

- (c) Except as provided by Section 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 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;
- (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;
- (C) the delivery and service deadlines;
- (D) the remedies for breach of contract;
- (E) the identity of all parties to the contract;

(F) the identity of all subcontractors in a contract;

(G) the affiliate overall or total pricing for a vendor, contractor, potential vendor, or potential contractor;

(H) the execution dates;

(I) the effective dates; and

(J) the contract duration terms, including any extension options[.]

*Id.* § 552.0222(b)(3). Kerrville argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, however, we find some of the information at issue is subject to section 552.0222(b)(3) and may not be withheld on the basis of section 552.110(b). *See id.* §§ 552.0222(b) (listing certain types of information not excepted under section 552.110). Additionally, we find Kerrville has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the district may not withhold any of the submitted information under section 552.110(b) of the Government Code.

Kerrville argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, however, we find some of the information at issue is subject to section 552.0222(b)(3) and may not be withheld on the basis of section 552.110(c). *See id.* §§ 552.0222(b). Additionally, we find Kerrville has failed to provide specific factual evidence demonstrating any portion the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any of the submitted information under section 552.110(c) of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.<sup>2</sup> *See id.* § 552.130. Accordingly, we find the district must withhold all license plate numbers and the state of issuance, motor vehicle registration information, and vehicle identification numbers within the submitted information under section 552.130 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, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b);

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<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).

*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 at 9 (2009). Accordingly, the district must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, the district must withhold all license plate numbers and the state of issuance, motor vehicle registration information, and vehicle identification numbers within the submitted information under section 552.130 of the Government Code and must withhold the insurance policy numbers within 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.

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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/eb

Ref: ID# 819934

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: 11 Third Parties  
(w/o enclosures)