



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2020

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

OR2020-13576

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# 828014 (R019304-022220).

The Dallas Independent School District (the "district") received a request for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of numerous third parties.¹ Accordingly, the district states, and provides documentation showing, it notified the third parties of the request for information and of their 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 considered the exception you claim and reviewed the submitted information.

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, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't

¹ AAI Trophies & Awards, LLC; Algy Costumes & Uniforms; Allgoods, LLC d/b/a Blue Moose Tees; Already Gear, Inc.; BSN Sports; Champion Teamwear; Cheers, Etc., Inc.; Custom Sportswear, Inc; Discount Dance, LLC; Dri-Stick Decal Corporation d/b/a Rydin Decal; Golden D'or Fabrics; Graphics Store; H&G Tshirt Company; Id Screen Print, LLC; Jacobs Ribbon and Awards; Jostens; Leapin Leotards Limited; M. Benjamin Designs; Positive Promotions, Inc.; Romeo Music; Sandy's Dancewear; Spirit Athletics, LLC; STS Brand, LLC; Team Go Figure; Texas Motion Sports; The Costume Closet; and Varsity Spirit Fashion.

Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See id.* § 552.110. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest any third party may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). 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). 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.

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.”¹ 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 the insurance policy numbers within the submitted information under section 552.136 of the Government Code.

We note some of the materials at issue may 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 district must withhold the insurance policy numbers within the submitted information under section 552.136 of the Government Code. The district must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

¹ 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).

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,

Katie Stallcup
Attorney
Open Records Division

AKS/jxd

Ref: ID# 828014

Enc. Submitted documents

c: Requestor
(w/o enclosures)

27 Third Parties
(w/o enclosures)