



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2020

Mr. Mario G. Perez Jr.
Counsel for the Zapata Independent School District
J. Cruz and Associates LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2020-18636

Dear Mr. Perez Jr.:

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# 837176.

The Zapata County Independent School District (the "district"), which you represent, received a request for the agreement related to RFP 20-0001 for Retail Electric Service Provider and the proposal submitted by Direct Energy in response to the RFP. You claim portions of the submitted information are excepted from disclosure under section 552.0222 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Direct Energy. Accordingly, you state, and provide documentation showing, you notified Direct Energy of the request for information and of the 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 considered the exception you claim and reviewed the submitted information.

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) 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Direct Energy explaining why the

submitted information should not be released. Therefore, we have no basis to conclude Direct Energy has any protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the district may not withhold any portion of the submitted information on the basis of any proprietary interest Direct Energy may have in the information.

You assert portions of the submitted contract are subject to section 552.0222 of the Government Code. Section 552.0222 states in relevant part:

(a) Contracting information is public and must be released unless excepted from disclosure under this chapter.

(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; [or]

(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) Notwithstanding Subsection (b), information described by Subdivisions (3)(A) and (B) of that subsection that relates to a retail electricity contract may not be disclosed until the delivery start date.

Id. § 552.0222(a), (b)(3)(A)-(B), (c). You state the contract at issue is a retail electricity contract. We note the delivery start date for the contract at issue has passed. Therefore, section 552.0222(c) is not applicable to the information at issue.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law

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).

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 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.

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.” Gov't Code § 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 district must withhold insurance policy numbers under section 552.136 of the Government Code.

In summary, the district must withhold the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold insurance policy numbers 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/jm

Ref: ID# 837176

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)