KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Ms. Tiffany Bangs
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002

OR2020-18977

Dear Ms. Bangs:

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# 837652 (C.A. File No. 20PIA0325).

The Office of the Harris County Purchasing Agent (the "purchasing office") received a request for a particular contract awarded to Davis Vision. Although the purchasing office takes no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Versant Health ("Versant").[1] Accordingly, you state, and provide documentation showing, you notified Versant 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 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from

[1] We note the purchasing office did not comply with section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider third party arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Versant explaining why the submitted information should not be released. Therefore, we have no basis to conclude Versant has a 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 purchasing office may not withhold the submitted information on the basis of any proprietary interest Versant may have in the 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."[2] *Id.* § 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. *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 purchasing office must withhold the public citizen's date of birth we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 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 determined an insurance policy number is an access device for purposes of this exception. Thus, the purchasing office must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

In summary, the purchasing office must withhold the public citizen's date of birth we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The purchasing office must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The purchasing office 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

[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).

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jm

Ref: ID# 837652

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)