



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 13, 2020

Mr. Stephen A. Villarreal  
Counsel for the Pharr-San Juan-Alamo Independent School District  
Thompson & Horton, LLP  
3200 Southwest Freeway, Suite 2000  
Houston, Texas 77027-7554

OR2020-28572

Dear Mr. Villarreal:

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# 850663.

The Pharr-San Juan-Alamo Independent School District (the “district”), which you represent, received a request for thirteen categories of information pertaining to a specified request for proposals, including evaluative documents, certain communications, and minutes from specified district board meetings. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of the following third parties: Aetna, Inc. (“Aetna”); Blue Cross Blue Shield of Texas, Inc. (“BCBSTX”); Gallagher Insurance Consulting (“Gallagher”); Ortegon Insurance Agency, LLC (“Ortegon”); Puro Aseguro; United Healthcare, Inc. (“United”); and Workplace Benefit Advisors.<sup>1</sup> Accordingly, you state, and provide documentation demonstrating, the district notified these interested 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 received comments from Aetna, BCBSTX, Gallagher, Ortegon, and United. We have considered the submitted arguments and reviewed the submitted information.

---

<sup>1</sup> We note the district did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Thus, we will consider whether the information at issue is excepted from disclosure under the Act.

Initially, we note the district has not submitted information responsive to the portion of the present request seeking the meeting minutes from the two district meetings specified in the request. To the extent any additional information responsive to that request existed on the date the district received the request, we assume the district has already released it to the requestor. If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, 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) 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 either of the remaining third parties 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 information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the district may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

Next, we note Aetna, BCBSTX, Gallagher, and United argue against the release of information the district has not submitted to this office for our review. This ruling does not address information that was not submitted by the district and is limited to the information the district has submitted for our review.<sup>2</sup> *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Aetna, BCBSTX, Ortegon, and United raise section 552.110 of the Government Code for some of their information at issue. Section 552.110(b) 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 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.

---

<sup>2</sup> As we are able to make this determination, we need not address the arguments against disclosure of this information.

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

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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Upon review, we find Aetna, BCBSTX, and United have demonstrated portions of their information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked and indicated under section 552.110(c) of the Government Code.<sup>3</sup> However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Additionally, we find Aetna, BCBSTX, Ortegón, and United have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes a trade secret or commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) Except as provided by Section 552.0222, information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

- (A) work;
- (B) organizational structure;
- (C) staffing;
- (D) internal operations;
- (E) processes; or

---

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

*Id.* § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Aetna, BCBSTX, Ortegon, and United raise section 552.1101(a) for some of the remaining information at issue. Upon review, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.0222(b). Additionally, we find Aetna, BCBSTX, Ortegon, and United have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the district may not withhold any portion of the remaining information under section 552.1101(a) of the Government Code.

BCBSTX raises section 552.137 of the Government Code for some of its remaining information at issue. Section 552.137 provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). Upon review, we find BCBSTX has failed to demonstrate section 552.137 is applicable to any portion of its remaining information at issue. *See id.* § 552.137(c) (Subsection (a) does not apply to an e-mail address contained in a response to a request for bids or proposals or contained in a response to similar invitations soliciting offers). Therefore, the district may not withhold any of the remaining information at issue under section 552.137 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>4</sup> *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See Open*

---

<sup>4</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).*

Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked and indicated under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

Section 552.136(b) 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 government 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 number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the district must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information appears to 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 information we marked and indicated under section 552.110(c) of the Government Code. The district must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked and indicated under section 552.117(a)(1) of the Government Code. The district must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The district must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/mo

Ref: ID# 850663

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: 7 Third Parties  
(w/o enclosures)