



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2020

Mr. James M. Stinson  
General Manager  
Woodlands Water Agency  
2455 Lake Robbins  
The Woodlands, Texas 77380

OR2020-28624

Dear Mr. Stinson:

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# 853788.

The Woodlands Water Agency (the "agency") received a request for information pertaining to a specified request for proposals and the resulting contract. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Ameresco, Inc. ("Ameresco"); Johnson Controls, Inc.; and McKinstry South Region. Accordingly, you state, and provide documentation showing, you notified the 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 Ameresco. We have considered the submitted arguments 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 to submit its reasons, if any, as to why info relating to that party should not be released. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from the remaining third parties. Thus, we have no basis to conclude either remaining third party 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 agency may

not withhold any of the submitted information on the basis of any proprietary interest either remaining third party may have in the information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *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 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 agency 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.<sup>1</sup>

Section 552.110(c) of the Government Code excepts from disclosure “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[.]” Gov’t Code § 552.110(c). Ameresco argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Ameresco has demonstrated its information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the agency must withhold the information we indicated under section 552.110(c) of the Government Code.<sup>2</sup>

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 governmental body is confidential.”<sup>3</sup> *Id.* § 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* (2009). Accordingly, the agency must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. Additionally, we note the remaining information contains utility account numbers. However, we are unable to determine if these utility account numbers are fictitious account numbers created as a sample for purposes of responding to the request for proposals at issue. Thus, to the extent the utility account numbers within the remaining information constitute actual account numbers, the agency must withhold them under section 552.136 of the Government Code. To the extent these account numbers are fictitious, the agency may not withhold the utility account numbers under section 552.136 of the Government Code.

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<sup>1</sup> As our ruling is dispositive, we need not address Ameresco’s remaining arguments against disclosure of this information.

<sup>2</sup> As our ruling is dispositive, we need not address Ameresco’s remaining arguments against disclosure.

<sup>3</sup> 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).

We note some of the remaining 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 agency 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. The agency must withhold the information we indicated under section 552.110(c) of the Government Code. The agency must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. To the extent the utility account numbers within the remaining information constitute actual account numbers, the agency must withhold them under section 552.136 of the Government Code. The agency must release the remaining information; however, any information protected by 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/jm

Ref: ID# 853788

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)