



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 11, 2022

Mr. Matthew E. Minick
County Attorney
Hardin County Attorney's Office
P.O. Box 516
Kountze, Texas 77625

OR2022-01004

Dear Mr. Minick:

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# 921814.

The Hardin County Purchasing Department (the "department") received a request for three categories of information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state you notified TLC Engineering, Inc. ("TLC") of the request for information and of its 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 submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted information responsive to the request for proposals submitted in response to the specified request for proposals. To the extent any information responsive to the remaining portions of the request existed on the date the department received the request, we assume the department has released it. If the department 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).

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b)-(c). Although the department argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address department's argument under section 552.110.

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 TLC. Thus, we have no basis to conclude TLC 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 department may not withhold any of the submitted information on the basis of any proprietary interest TLC 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."¹ Gov't Code § 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 department 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 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." 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 (2009). Accordingly, the department must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

In summary, the department 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 department must withhold the insurance policy numbers in the submitted

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).

information under section 552.136 of the Government Code. The department 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/ba

Ref: ID# 921814

Enc. Submitted documents

c: Requestor
(w/o enclosures)