



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 18, 2022

Ms. Kristi Godden  
Counsel for the Edinburg Consolidated Independent School District  
O'Hanlon, Demerath & Castillo  
808 West Avenue  
Austin, Texas 78701

OR2022-01413

Dear Ms. Godden:

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# 926105 (Ref. No.E001694).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for all proposals submitted in response to a specified request for proposals. You state you have released some information. 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 MCM CPAs & Advisors, LLP, Moss Adams, Inc., and PBMares, LLP ("PBMares"). Accordingly, you state, and provide documentation showing, you notified these 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 PBMares. 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 any of the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties have 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 district may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

PBMares raises section 552.104 of the Government Code for its information. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address PBMares’ argument under section 552.104.

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[.]” *Id.* § 552.110(c). PBMares argues portions of its information consist of commercial or financial information subject to section 552.110(c). Upon review, we find PBMares has demonstrated some of the submitted information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by PBMares, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110.<sup>1</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 government body is confidential.”<sup>2</sup> *Id.* § 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.

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

<sup>2</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).

In summary, the district must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the customer information is made available to the public by PBMAres, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110. The district must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The remaining information must be released.

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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/jxd

Ref: ID# 926105

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)