



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 8, 2022

Mr. Allen M. Keller
Counsel for Harmony Public Schools
Schulman, Lopez, Hoffer & Adelstein, L.L.P.
845 Proton Road
San Antonio, Texas 78258

OR2022-06878

Dear Mr. Keller:

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# 934295.

Harmony Public Schools ("Harmony"), which you represent, received a request for contract information pertaining to two specified RFPs. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: AHI Facility Services, Inc.; Caring Commercial Cleaning, Inc.; FEC Cleaning Services, LLC; Ortiz & Garza Cleaning Service; Preferred Meal Systems, Inc.; and Revolution Foods, Inc. 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 considered the exception you claim and reviewed the submitted information, a portion of which is a representative sample.¹

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

Initially, 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 any of the notified third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude the notified 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, Harmony may not withhold any portion of the submitted information on the basis of any proprietary interest the notified third parties may have in it.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find you failed to demonstrate the applicability of section 552.104 to the submitted information. Thus, we conclude Harmony may not withhold the submitted information under section 552.104(a).

Section 552.136 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."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Accordingly, Harmony must withhold the insurance policy numbers within the submitted information under section 552.136 of the Government Code. The remaining information must be released.

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

² 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).

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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/jxd

Ref: ID# 934295

Enc. Submitted documents

c: Requestor
(w/o enclosures)

6 Third Parties
(w/o enclosures)