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ATTORNEY GENERAL OF TEXAS

March 21, 2022

Ms. Felicia Webb
Counsel for the Eagle Mountain-Saginaw Independent School District
Leasor Crass, P.C.
302 West Broad Street
Mansfield, Texas 76063

OR2022-08021

Dear Ms. Webb:

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# 934605.

The Eagle Mountain-Saginaw Independent School District (the "district"), which you represent, received a request for three categories of information pertaining to student transportation services. The district claims the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.136 of the Government Code.¹ Additionally, the district informs us release of the submitted information may implicate the proprietary interests of the following third parties: ALC Schools, LLC; First Student, Inc. ("First Student"); Student Transportation of America d/b/a Goldstar Transit; and Texas Central School Bus. Accordingly, the district states, and provides documentation showing, it notified these interested third parties of the request for information and of their right to submit arguments to this office. *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). Additionally, we understand release of the information at issue may implicate the proprietary interests of Pupil Transportation Services. Accordingly, pursuant to section 552.305 of the Government Code, the district was required to notify this interested third party of the request for information and of its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* ORD 542. We have

¹ Although the district also raises sections 552.110 and 552.1101 of the Government Code, we note these exceptions protect the interests of third parties, not the interests of governmental bodies themselves. Thus, we do not address the district's arguments under section 552.110 and 552.1101 of the Government Code.

received comments from First Student. We have considered submitted arguments and reviewed the submitted information.

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) of the Government Code 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 received comments from only First Student 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 submitted information. *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 the information at issue on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by chapter 418 of the Government Code. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides the following:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181; *see also id.* § 421.001(2) (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of state or nation). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The district states the information it indicated consists of the district's bus routes, which reveals "the start and end points of each bus route, as well as the time each bus arrives and departs at its designated locations." The district contends, and we agree, the district's bus routes are critical infrastructure for purposes of section 418.181. *See generally id.* § 421.001(2). The district explains release of the information at issue "would highlight the vulnerabilities of the [d]istrict's transportation infrastructure." Based upon these representations and our review of the information at issue, we find the district has demonstrated the applicability of section 418.181 to the some of the information at issue. Accordingly, the district must withhold the information we marked under section 552.101

of the Government Code in conjunction with section 418.181 of the Government Code.² However, we find the district has failed to establish the remaining information at issue reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. *See* Open Records Decision Nos. 542 (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Thus, the district has failed to establish any of the remaining information is confidential under section 418.181 of the Government Code. Gov't Code § 418.181. Therefore, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

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 the district has failed to demonstrate the applicability of section 552.104 to the information at issue. Therefore, we conclude the district may not withhold any of the information at issue under section 552.104(a) of the Government Code.

Section 552.110(b) of the Government Code 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* Gov't Code § 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.

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). First Student

² As our ruling is dispositive, we need not address the district’s remaining argument against disclosure of this information.

argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find First Student has demonstrated portions of the information at issue constitute trade secrets under section 552.110(b) or commercial or financial information, the release of which would cause substantial competitive harm under section 552.110(b). Accordingly, the district must withhold the information we marked under sections 552.110(b) and 552.110(c) of the Government Code; however, to the extent the client information pertaining to First Student is made available to the public, including but not limited to on the company's website or social media accounts, it may not be withheld under section 552.110(b).³ Nonetheless, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the bases of either section 552.110(b) or section 552.110(c). 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

(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), (b). 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). First Student asserts its remaining information at issue is subject to section 552.1101(a). However, upon review, we find 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.*

³ As our ruling is dispositive, we need not address First Student's remaining argument against disclosure of this information.

§ 552.0222(b) (listing certain types of information not excepted under section 552.1101). Therefore, the district may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.⁴ *See id.* § 552.130. Accordingly, the district must withhold the license plate numbers and vehicle identification numbers within the remaining information under section 552.130 of the Government Code.

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Additionally, this office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the district must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. However, we find the district has not explained how any of the remaining information at issue consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See* Gov't Code §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find the district has failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining information at issue and the district may not withhold it on this ground.

We note some of the remaining information 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 district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The district must withhold the information we marked under sections 552.110(b) and 552.110(c) of the Government Code; however, to the extent the client information pertaining to First Student is made available to the public, including but not limited to on

⁴ 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).

the company's website or social media accounts, it may not be withheld under section 552.110(b) of the Government Code. The district must withhold the license plate numbers and vehicle identification numbers within the remaining information under section 552.130 of the Government Code. The district must withhold the 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 934605

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)