



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2022

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

OR2022-11823

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# 943105.

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. You state the district will redact student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code.² Additionally, the district informs us release of the submitted information may implicate the proprietary interests of Student Transportation of America d/b/a Goldstar Transit. Accordingly, the district states, and provides documentation showing, it notified the interested third party of the request for information and of the right to submit arguments to this office. *See Gov't*

¹ The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>

² 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.

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 your claimed exception and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2022-08021 (2022). In that ruling, we determined the district must (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code, (2) 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) of the Government Code, (3) withhold the license plate numbers and vehicle identification numbers within the remaining information under section 552.130 of the Government Code, (4) withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code, and (5) release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the district must continue to rely on Open Records Letter No. 2022-08021 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, 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 not received comments from the notified third party explaining why the submitted information should not be released. Thus, we have no basis to conclude the notified 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). Therefore, the district may not withhold any of the submitted information on the basis of any proprietary interest the notified third party may have in the submitted information.

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 submitted information. Therefore, we conclude the district may not withhold any of the submitted information under section 552.104(a) of the Government Code.

In summary, the district must continue to rely on Open Records Letter No. 2022-08021 as a previous determination and withhold or release the requested information in accordance with that ruling. The district must release the submitted 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 943105

c: Requestor