



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2022

Ms. Esther Kolni
General Counsel
Irving Independent School District
2621 West Airport Freeway
Irving, Texas 75062

OR2022-19631

Dear Ms. Kolni:

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# 958012 (File No. I001279-041222).

The Irving Independent School District (the "district") received a request for results and winning bids related to a specified request for proposals. 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 named third parties. 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.¹ *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

¹ The notified third parties are: 3-C Technology, LLC; Abaca Lab LLC; Accurate C&S Services Inc.; AERUS (ARS Home Solutions); Alterra Medical; Bay Promo LLC; Brookaire Company, LLC; Bttm Technologies, Inc.; By Love Inc.; Carter Health Disposables, LLC; Citadel PPE d/b/a Stand Up Stations; Comoroz Inc.; Complete Supply, Inc.; Deepka Import LLC; Dent Enterprises LLC; Gill Digital Services, LLC; The Home Depot Pro; ivWatch; Indo Trading LLC; Interboro Packaging Corporation; JDD Global Supply; Kimbell Inc.; Kits for Kidz; Liberty Office Products (Liberty Data Products); LubeMatrix, Inc.; Malor Company Inc.; Medco Sports Medicine (Performance Health Supply); Medicaleshop Inc.; Medzon Health; Office Depot, Inc.; Precision Imaging (L&B Group, LLC); Premier Medical Distribution; Pyramid School Products; QYK Brands LLC; RADG Holdings LLC; SanitizeNow Inc.; School Health Corporation; School Nurse Supply, Inc.; Smart Group Systems; South Texas Solar Systems (Aberration Inc.); Texas MedPlast, LLC; Unipak Corp.; U.S. Health Express Corp.; Uweport LLC; Vastmed, LLC; Vizocom ICT LLC; Wedge Supply, LLC; and William V. MacGill & Co.

of exception in the Act in certain circumstances). We have 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) 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 third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any 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). Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest any third party may have in the information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found.*, 540 S.W.2d at 685. 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 Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 district must withhold all public citizens' dates of birth within the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining materials 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 all public citizens' dates of birth within the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 958012

Enc. Submitted documents

c: Requestor
(w/o enclosures)