



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2022

Ms. Tiffany Bangs
Assistant County Attorney
Harris County
1019 Congress Street, 15th Floor
Houston, Texas 77002-1700

OR2022-24517

Dear Ms. Bangs:

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# 966504 (Ref. Nos. 22PIA0617, 22PIA0618 & 22PIA0619).

The Harris County Purchasing Agent (the "county") received three requests from three different requestors for information pertaining to Request for Proposals 21/0314. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of BQR Advertising and Public Relations, Inc. ("BQR"), Elmore Public Relations, Langrand and Company, LLC, Lopez Negrete Communications, Inc. ("LNC"), and Satori Marketing, LLC. 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 information at issue 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 BQR and LNC.¹ We have considered the submitted arguments and reviewed the submitted information.

¹ Although BQR does not cite to sections 552.101 and 552.110 of the Government Code in its brief, we understand BQR to raise these exceptions based on the substance of its arguments.

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

Next, we note LNC argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the county has submitted to this office for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the county submitted as responsive to the requests for information.

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). BQR and LNC argue some of the information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find BQR and LNC have demonstrated some of the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the county must withhold the information we have indicated under section 552.110(c) of the Government Code; however, to the extent BQR's customer information is made available to the public by BQR, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110.² Additionally, we find BQR has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the county may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus.*

² As our ruling is dispositive, we need not address LNC's remaining arguments against disclosure of this information.

Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). 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 court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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 county must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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.”³ 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. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the county must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

We note some of the remaining information 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 county must withhold the information we have indicated under section 552.110(c) of the Government Code; however, to the extent BQR's customer information is made available to the public by BQR, including but not limited to on its website or social media accounts, it may not be withheld under section 552.110 of the Government Code. The county must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The county must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code. The county must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

³ The Office of the Attorney General will raise mandatory exceptions 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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 966504

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

5 Third Parties
(w/o enclosures)