



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2022

Mr. Benjamin Lugg
Attorney
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2022-32335

Dear Mr. Lugg:

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# 975884 (Ref. No. W003010).

The San Antonio Housing Authority (the "authority") received a request for information pertaining to a specified request for proposals and the related contract. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of the following third parties: Novogradac & Company, LLP; GoSection8.com; EZ-Reasonable Rent Determination; and Inspect2GO, Inc. Accordingly, you state, and provide documentation showing, you notified the 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.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the third parties. Thus, we have no basis to conclude the 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). Accordingly, the authority may not

withhold any of the submitted information on the basis of any proprietary interest the third parties may have in the 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 authority has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the authority may not withhold the information at issue under section 552.104(a) of the Government Code.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(b)-(c). Although the authority argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the authority’s argument under section 552.110.

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.”¹ *Id.* § 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 authority must withhold all insurance policy numbers in the submitted information under section 552.136 of the Government Code.

In summary, the authority must withhold all insurance policy numbers in the submitted information under section 552.136 of the Government Code. The authority must release the remaining 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-records>

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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Sincerely,

Cesar Mata
Attorney
Open Records Division

CM/mo

Ref: ID# 975884

c: Requestor