



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 18, 2022

Ms. Amanda M. Bigbee  
General Counsel  
Keller Independent School District  
350 Keller Parkway  
Keller, Texas 76248

OR2022-36048

Dear Ms. Bigbee:

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# 981416 [PIR0002227].

The Keller Independent School District (the "district") received a request for information pertaining to a specified RFP. You state some of the submitted information has been released. The district states release of the submitted information may implicate the proprietary interests of the following third parties: EMS LINQ LLC; Frontline Technologies Group LLC ("Frontline"); Phoenix Business, Inc.; PowerSchool Group LLC; Skyward, Inc.; ("Skyward"); Tyler Technologies, Inc. ("Tyler"). 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). We have received comments from Frontline, Skyward, and Tyler. We have considered the 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 Frontline, Skyward, and Tyler 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 submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

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 id.* § 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). Frontline, Skyward, and Tyler argue some of their 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 Tyler and Skyward have demonstrated their information at issue and constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent the client information pertaining to Skyward 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(c).<sup>1</sup> However, we find Frontline has failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Section 552.136 of the Government Code provides, “Notwithstanding 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the district must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

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 552.110(c) of the Government Code; however, to the extent the client information pertaining to Skyward 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(c) of the Government Code. The district must withhold the insurance policy numbers in 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,

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/mo

Ref: ID# 981416

Enc. Submitted documents

c: Requestor  
(w/o enclosures)