



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2022

Mr. Albert Escobedo Tovar
Legal Services
VIA Metropolitan Transit
123 North Medina Street
San Antonio, Texas 78207

OR2022-36583

Dear Mr. Tovar:

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# 986249.

VIA Metropolitan Transit ("VIA") received a request for all procurement documents awarded to a specified third party at a specified board meeting. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of 21Tech, LLC ("21Tech"). Accordingly, you state, and provide documentation showing, you notified 21Tech of the request for information and of its 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 considered the exceptions you claim 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 not received comments from 21Tech explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude 21Tech has 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). Accordingly, VIA may not withhold any portion of the submitted information on the basis of any proprietary interest 21Tech may have in it.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the doctrine of common-law 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, VIA must withhold the public citizen’s date of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136(b) 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 government body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find you have failed to demonstrate any portion of the remaining information consists of an access device number for purposes of section 552.136. Therefore, VIA may not withhold any of the remaining information under section 552.136 of the Government Code.

In summary, VIA must withhold the public citizen’s date of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and 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-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# 986249

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)