



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2013

Mr. John A. Kazen
Counsel for the Laredo Independent School District
Kazen, Meurer & Perez, L.L.P.
211 Calle Del Norte, Suite 100
Laredo, Texas 78041

OR2013-03048

Dear Mr. Kazen:

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# 479422.

The Laredo Independent School District (the "district"), which you represent, received two requests from the same requestor for all records pertaining to RFP# 12-042, Pest Management Services, including purchasing or committee comments and reasons considered for recommending the awarding to a company proposing a higher price; all bid documents and evaluations for RFP# 12-042 dating back eight years from October 12, 2012, all copies of purchase orders for Pest Management Services dating back eight years from October 12, 2012; all records including dates and times of committee meetings; names of all awarding committee members and all comments discussions and reasons for not awarding RFP to Asash; the committees; and names of all school board members. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.¹ You also state the release of the submitted information may implicate the proprietary interests of EcoLab and Orkin Pest Control Laredo ("Orkin"). Accordingly, you notified EcoLab and Orkin of the request and of their right to submit arguments to this office explaining why their information should not be released. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be

¹Although you raised section 552.104 of the Government Code, you did not provide any arguments regarding the applicability of this section. Therefore, we assume you have withdrawn this exception. *See Gov't Code §§ 552.301, .302.*

released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district only submitted two proposals pertaining to RFP# 12-042. To the extent information responsive to the rest of the request exists, we assume the district has released it to the requestor. If not, then the district must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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. Section 552.101 encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. You cite to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), in support of your argument under common-law privacy for the submitted information. In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of sexual harassment. Here, however, the information at issue does not relate to an investigation of sexual harassment. Therefore, we find that *Ellen* is not applicable in this instance and the district may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy on the basis of *Ellen*. Furthermore, we note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also* *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), rev'd on other grounds, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Upon review, we find you have failed to demonstrate how any portion of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Therefore, no portion of the submitted information may be withheld under section 552.101 on the basis of common-law privacy.

Although the district also cites to section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. 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

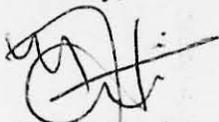
letter, we have not received arguments from EcoLab or Orkin. Thus, EcoLab and Orkin have failed to demonstrate they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest EcoLab or Orkin may have in the information.

Section 552.136(b) of the Government Code states that “[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.”² Gov’t Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the district must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code. As no further exceptions to disclosure are raised, the district 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Thana Hussaini
Assistant Attorney General
Open Records Division

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²The 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).

Ref: ID# 479422

Enc. Submitted documents

c: Requestor
(w/o enclosures)

