



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2013

Mr. Jaime J. Muñoz  
Counsel for the La Joya Independent School District  
Attorney at Law  
P.O. Box 47  
San Juan, Texas 78589

OR2013-20078

Dear Mr. Muñoz:

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# 506003.

The La Joya Independent School District (the "district"), which you represent, received a request for all responses, including bid tabulations and scoring sheets, to CSP No. 2013-107. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. Because release of the requested information may implicate the interests of AT&T Corporation ("AT&T"), you state the district notified AT&T of the request for information and of its right to submit arguments stating why the 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 released); 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 exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the district received

the present request for information on August 28, 2013. We note September 2, 2013 was a holiday. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the district's ten-business-day deadline was September 12, 2013. The district's request for a ruling was received electronically by this office on September 13, 2013, after the ten-business-day deadline had passed. Thus, the district failed to comply with the requirements mandated by subsection 552.301(b).

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982).

The district raises section 552.104 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Thus, in failing to comply with section 552.301, the district has waived its arguments under section 552.104, and may not withhold the information at issue on that basis. Since third-party interests can provide a compelling reason for non-disclosure, we will consider whether the information at issue may be withheld on behalf of any third party. Further, because section 552.136 of the Government Code can provide a compelling reason to withhold information, we will consider whether any of the submitted information is subject to this exception.<sup>1</sup>

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 AT&T explaining why its information should not be released. Therefore, we have no basis to conclude AT&T has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 any of the information at issue on the basis of any proprietary interest AT&T may have in it.

Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136.<sup>2</sup> Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.<sup>3</sup> The remaining submitted information must be released.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/bhf

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<sup>2</sup>See Open Records Decision No. 684 at 9 (2009) (insurance policy number is an access device number for purposes of section 552.136)

<sup>3</sup>Section 552.136(c) authorizes a governmental body to redact information protected by section 552.136(b) without requesting a decision. *See id.* § 552.136(d)-(e) (providing requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor).

Ref: ID# 506003

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

AT&T Corporation  
One AT&T Plaza  
208 South Akard Street, Room 2731  
Dallas, Texas 75202  
(w/o enclosures)