



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2014

Mr. Darin Darby
Escamilla & Poneck, L.L.P.
700 North Saint Mary's Street, Suite 850
San Antonio, Texas 78205

OR2014-18616

Dear Mr. Darby:

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# 539830.

The San Antonio Independent School District (the "district"), which you represent, received a request for information related to the district's request for proposals number 11007(FA). You claim some of the requested information is excepted from disclosure under section 552.136 of the Government Code. Although you take no position on the public availability of the remaining requested information, you state the information at issue may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified the interested third parties of the request and of their rights to submit comments to this office as to why the requested information should not be released to the requestor.¹ *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

¹The third parties notified pursuant to section 552.305 of the Government Code are the following: ACS, Cybershift, Dayforce, Empower Software Solutions, Miratek Corp./Qquest Software Systems, NOVAtime Technology, Inc., and Time Clock Plus.

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 any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party 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 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 any third party 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.” Gov't Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136.² *See id.* § 552.136(a) (defining “access device”). Therefore, the district must withhold the submitted insurance policy numbers pursuant to section 552.136 of the Government Code. However, we note an employer identification number (“EIN”) is not an “access device number” for the purposes of section 552.136. The EIN is merely an employer tax identification number. Therefore, the district may not withhold any of the submitted EINs under section 552.136 of the Government Code.

We note some of the remaining information 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 submitted insurance policy numbers pursuant to section 552.136 of the Government Code. The district must release the remaining information; however, the district may release information protected by copyright only in accordance with copyright law.

²Although the district also seeks to withhold account and insurance group numbers under section 552.136, we note the submitted records do not include those types of 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.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/dls

Ref: ID# 539830

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David Ivey
ACS, A Xerox Company
1111 Shady Oaks Circle
McKinney, Texas 75070
(w/o enclosures)

Mr. Jim Durso
Cybershift
600 Parsippany Road
Parsippany, New Jersey 07054
(w/o enclosures)

Mr. John Orr
Dayforce
c/o Mr. Darin Darby
Escamilla & Poneck, L.L.P.
700 North Saint Mary's Street, Suite 850
San Antonio, Texas 78205
(w/o enclosures)

Mr. Robert Dunn
Empower Software Solutions
315 East Robinson Street, Suite 350
Orlando, Florida 32801
(w/o enclosures)

Mr. Michael E. Smentkiewicz
Miratek Corp.
Qqest Software Systems
9350 South 150 East
Sandy, Utah 84070
(w/o enclosures)

Mr. Ty Hall
NOVAtime Technology, Inc.
c/o Mr. Darin Darby
Escamilla & Poneck, L.L.P.
700 North Saint Mary's Street, Suite 850
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Mr. Jordy Moorman
Time Clock Plus
3322 West Loop 306
San Angelo, Texas 76904
(w/o enclosures)