



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Ms. Jacqueline E. Hojem  
Public Information Coordinator  
Metropolitan Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2015-26992

Dear Ms. Hojem:

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# 591736 (MTA 2015-0427).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for information pertaining to a specified request for proposals. Although METRO takes no position as to whether the submitted information is excepted under the Act, METRO informs us release of this information may implicate the proprietary interests of Aetna, Inc. ("Aetna"), Davis Vision, EyeMed Vision Care ("EyeMed"), Guardian Life Insurance Company, MetLife GVWS, and United Healthcare. Accordingly, METRO states, and provides documentation showing, it notified these third parties of the request for information and of their 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 received comments from Aetna and EyeMed. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We note METRO did not comply with section 552.301 of the Government Code in requesting a ruling. *See* Gov't Code § 552.301(b), (e). Nevertheless, because third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the submitted arguments for the submitted information. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977).

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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, METRO may not withhold the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Aetna and EyeMed raise section 552.104 of the Government Code for portions of their submitted information. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. Aetna and EyeMed state they have competitors. In addition, Aetna and EyeMed state release of the information they have indicated regarding pricing, clients, and performance guarantees would result in competitive harm. After review of the information at issue and consideration of the arguments, we find Aetna and EyeMed have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude METRO may withhold the information Aetna and EyeMed have indicated under section 552.104(a) of the Government Code.<sup>2</sup>

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."<sup>3</sup> *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, METRO must withhold the insurance policy numbers within the submitted documents under section 552.136 of the Government Code.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>3</sup>The 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).

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, METRO may withhold the information Aetna and EyeMed have indicated under section 552.104(a) of the Government Code. METRO must withhold the insurance policy numbers within the submitted documents under section 552.136 of the Government Code. The remaining information must be released; 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 [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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/dls

Ref: ID# 591736

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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