



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2016

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
P.O. Box 20100  
El Paso, Texas 79998-0100

OR2016-05834

Dear Ms. Collins:

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# 601637 (EPISD ORR# 2015.519).

The El Paso Independent School District (the "district") received a request for information pertaining to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Marathon Health, Inc. ("Marathon") and Vera Whole Health, Inc. ("Vera"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information 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 reviewed the submitted information.<sup>1</sup>

---

<sup>1</sup>We note the district did not comply with the requirements of section 552.301(e) of the Government Code for a portion of the submitted information. *See* Gov't Code § 552.301 (e). Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the information at issue must be withheld under the Act on that ground.

We note 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 comments from either third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude either third party has any protected proprietary interest in the 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. Consequently, the district may not withhold any of the submitted information on the basis of any proprietary interests Marathon or Vera may have in the information.

We note portions of the submitted information are subject to section 552.136 of the Government Code, which states “[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.”<sup>2</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Thus, the district must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

We also note that 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. *See* Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.*; *see also* 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 insurance police numbers in the submitted information under section 552.136 of the Government Code. The district must release the remaining information, but any information protected by copyright may only be released in accordance with copyright law.

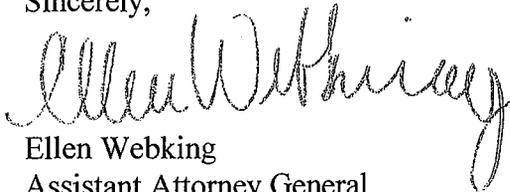
---

<sup>2</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).

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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 601637

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Scott LaPlant  
Chief Financial Officer  
Marathon Health  
Champlain Mill 20 Winooski Falls  
Way, Suite 400  
Winooski, Vermont 05404  
(w/o enclosures)

Ms. Summer Redmon  
Director of Accounting  
Vera Whole Health  
605 Fifth Avenue South #150  
Seattle, Washington 98104  
(w/o enclosures)

