



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
301 Tarrow Street, 6th Floor  
College Station, Texas 77840

OR2016-14556

Dear Mr. Moore:

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# 615785 (W000664-040616).

The Texas A&M University System (the "system") received a request for scoring rubrics and sheets, competitor bids, pricing information, and all other bid related materials for RFP 15-0050. You claim portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code.<sup>1</sup> Further, you state release of the submitted information may implicate the proprietary interests of PassportParking, LLC; Pango Mobile Parking; LocoMobi; ParkX; PayByPhone; MobileNow!, LLC; and Parkmobile. Accordingly, you state, and provide documentation showing, you notified the 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 received comments from LocoMobi. We have reviewed the submitted information and the submitted arguments.

Initially, 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.

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<sup>1</sup>Although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise this exception based on your markings.

*See id.* § 552.305(d)(2)(B). As of the date of this letter, we have received comments only from LocoMobi explaining why its submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties 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 system may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

LocoMobi seeks to withhold some of its information under section 552.104(a) of the Government Code, which 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. LocoMobi states it has competitors. In addition, LocoMobi states release of portions of its information would give competitors an unfair advantage in future bids. After review of the information at issue and consideration of the arguments, we find LocoMobi has established the release of the information it seeks to withhold would give advantage to a competitor or bidder. Thus, we conclude the system may withhold the information at issue, which we marked, 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.” Gov’t Code § 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, the system must withhold the routing and bank account numbers you marked, and the additional routing, bank account, and insurance policy numbers we marked, under section 552.136 of the Government Code.<sup>3</sup>

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

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<sup>2</sup>As our ruling is dispositive, we need not address LocoMobi’s remaining argument against disclosure of this information.

<sup>3</sup>Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

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, we find the system may withhold portions of LocoMobi's information, which we marked, under section 552.104(a) of the Government Code. The system must withhold the routing and bank account numbers you marked, and the additional routing, bank account, and insurance policy numbers we marked, under section 552.136 of the Government Code. The system must release the remaining information; however, any information protected by 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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 615785

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)