



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 29, 2011

Ms. Sheila Haddock
General Counsel
Clear Creek Independent School District
2425 East Main Street
League City, Texas 77573

OR2011-05894

Dear Ms. Haddock:

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# 415880.

The Clear Creek Independent School District (the "district") received two requests for all vendor responses to RFCSP 2010.521—Food Service Point of Sale System. Although you raise no exceptions to disclosure of the submitted information, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you inform us you have notified Cybersoft Technologies, Inc. ("Cybersoft"); Horizon Software International ("Horizon"); LunchByte Systems, Inc. ("LunchByte"); MCS Software, L.L.C. ("MCS"); and PCS Revenue Control Systems, Inc. ("PCS") of the requests and of their right to submit arguments to this office explaining why their 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); *see also* 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 received comments from LunchByte and MCS. We have considered the submitted arguments and reviewed the submitted information.

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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Cybersoft, Horizon, and PCS have not submitted any comments to this office explaining how release of the submitted information would affect their proprietary interests. Accordingly, none of the information at issue may be withheld on the basis of the proprietary interests of these companies. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating

business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

Next, we note LunchByte has submitted arguments regarding information beyond that which the district submitted to this office for our review. This ruling does not address such information, and is limited to the information submitted as responsive to the request by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). As LunchByte has not submitted arguments against disclosure of any of the submitted information, the district may not withhold any information on the basis of LunchByte's arguments.

MCS argues its information is confidential and proprietary. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless the information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise. As MCS raises no exception to disclosure, the district may not withhold any information on the basis of MCS's arguments.

We note a portion of the submitted information is subject to section 552.136 of the Government Code.¹ Section 552.136 provides “[n]otwithstanding 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 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 district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.² The district must release the remaining information.

¹The 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).

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 415880

Enc. Submitted documents

c: Requestors
(w/o enclosures)

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