



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 25, 2013

Ms. Arminda Munoz
Public Information Officer
Public Information Department
Weslaco Independent School District
P.O. Box 266
Weslaco, Texas 78596-0266

OR2013-10750

Dear Ms. Munoz:

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# 491181.

The Weslaco Independent School District (the "district") received a request for copies of all proposals submitted for Voluntary Employee (Insurance) Benefit Products, Proposal #13-09-08, all meeting minutes of the district's Board of Trustees (the "board"), including the meeting called on September 18, 2012, minute meetings of all insurance committee meetings, all notices prepared regarding the products and agents awarded, scoring grids, insurance contracts in place as a result of the approval and award, and all documents related to recommendations made by the board. Although you take no position as to whether the requested information is excepted under the Act, you indicate the release of the requested information may implicate the proprietary interests of Humana Inc. ("Humana"), Davis Vision, Inc. ("Davis"), and VSP.¹ Accordingly, pursuant to section 552.305 of the Government Code, you were required to notify 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

¹Although you raise sections 552.101, 552.104, and 552.110 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

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.

Initially, we note the district only submitted the requested proposals. To the extent information responsive to the rest of the request existed at the time the district received the instant request, we assume the district has released it to the requestor. If not, then the district must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Next, we must address the district's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the district received the request for information on April 2, 2013. Thus, we find the district's ten-business-day deadline was April 16, 2013, and fifteen-business-day deadline was April 23, 2013. However, the district did not request a ruling from this office until April 17, 2013, and did not submit the requested proposals until April 24, 2013. *See id.* § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Consequently, we find the district failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Because third-party interests are at stake in this instance, we will consider whether the information at issue must be withheld under the Act.

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 Humana, Davis, or VSP explaining why their information should not be released. Therefore, we have no basis to conclude any of these 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, 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 any of the information at issue on the basis of any proprietary interest any of these third parties may have in it.

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."² Gov't Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the submitted 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 insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released; 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.

²The 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 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 491181

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Humana, Inc.
c/o Arminda Munoz
Public Information Officer
Public Information Department
Weslaco Independent School District
P.O. Box 266
Weslaco, Texas 78596-0266
(w/o enclosures)

Davis Vision, Inc.
c/o Arminda Munoz
Public Information Officer
Public Information Department
Weslaco Independent School District
P.O. Box 266
Weslaco, Texas 78596-0266
(w/o enclosures)

VSP
c/o Arminda Munoz
Public Information Officer
Public Information Department
Weslaco Independent School District
P.O. Box 266
Weslaco, Texas 78596-0266
(w/o enclosures)