



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2016

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2016-24085

Dear Ms. Ellison:

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# 632086 (Internal File Nos. Day D081116, Mellon HC081216D, Mellon HC081216F, HC081216G, & Capo HFT080916).

The Houston Independent School District (the "district") received five requests from three different requestors for information pertaining to a specified request for proposals and all communications pertaining to specified entities.¹ You state you will release some information. 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 Aetna Life Insurance Company ("Aetna"); Blue Cross Blue Shield of Texas ("Blue Cross"); Cigna Health and Life Insurance Company ("Cigna"); Connect Your Care ("Connect"); Mercer Health & Benefits, LLC ("Mercer"); ReliaStar Life Insurance Company ("ReliaStar"); United HealthCare Services, Inc. ("United"); and WageWorks, Inc. ("WageWorks"). Accordingly, you state, and provide documentation showing, you notified the third parties of the requests 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

¹In a letter dated October 7, 2016, you inform us that one of the requestors has voluntarily withdrawn his request for information.

received comments from Aetna, Blue Cross, Cigna, Connect, Mercer, and United. We have reviewed the submitted information and considered 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. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from ReliaStar or WageWorks explaining why the submitted information should not be released. Therefore, we have no basis to conclude ReliaStar or WageWorks 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 district may not withhold the submitted information on the basis of any proprietary interest ReliaStar or WageWorks may have in the information.

Next, we note Connect argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the district has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the district submitted as responsive to the request for information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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, Blue Cross, Cigna, Connect, Mercer, and United state they have competitors. Aetna states the healthcare administration industry is a highly competitive market and release of any of its information would "confer competitive advantages on Aetna's competitors." Blue Cross states its information contains key details about its business practices and release would provide its competitors with an unfair advantage. Cigna states release of its information would "undercut Cigna's competitive market position . . . [and] hinder Cigna's ability to effectively compete[.]" Connect states releasing the information at issue "would undoubtedly give competitors an advantage." Mercer informs us it "is a consultant to [the district] and assists it in requesting and evaluating proposals for health and welfare products[.]" It states release of its information would "subject Mercer to unfair competition from other potential consultants and subject [the district] to a weakened position in attempting to secure the best competitive bids[.]" United states release of its information would "severely harm the ability of United to remain competitive in future bids." After review of the information at issue and consideration of the arguments, we find Aetna, Blue Cross, Cigna, Connect, Mercer, and United have established the release of the information

at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we marked and indicated under section 552.104(a) of the Government Code.²

Section 552.136 of the Government Code provides, “[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.”³ 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. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code.

In summary, the district may withhold the information we marked and indicated under section 552.104(a) of the Government Code. The district must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The district must release the remaining information.

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, 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.

³The 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).

Ref: ID# 632086

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

8 Third Parties
(w/o enclosures)