



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2016

Ms. Leah Wingerson
Coordinator of Legal Services
Lewisville Independent School District
P.O. Box 217
Lewisville, Texas 75067

OR2016-25468

Dear Ms. Wingerson:

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# 634490.

The Lewisville Independent School District (the "district") received a request for documents pertaining to the district's proposed use of a specified facility for graduation ceremonies. You state portions of the submitted information are excepted from disclosure under sections 552.104 and 552.111 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of the Dallas Cowboys. Thus, pursuant to section 552.305 of the Government Code, you notified the third party of the request and of its right to submit arguments to this office as to why the submitted information should not be released. 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 to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have marked a portion of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the district need not release non-responsive information to the requestor.

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), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *Id.* § 552.301(b). The district states it received the request for information on August 9, 2016. Accordingly, the district's ten-business-day deadline under section 552.301(b) was August 23, 2016. The district states it sought clarification of the request on August 24, 2016, and received clarification from the requestor on August 24, 2016. Thus, we understand the district to claim the deadlines should be reset because the district asked for clarification from the requestor. However, we note the district did not request clarification of the request until after the ten-business-day deadline for the request had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documentation for the request were not reset by the request for clarification and must be measured from the date the district received the request for information. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Thus, as stated above, the district's ten-business-day deadline was August 23, 2016. However, the request for a ruling was sent on September 8, 2016. *See Gov't Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See id.* The district claims sections 552.104 and 552.111 of the Government Code for the submitted information. However, these exceptions are discretionary in nature and do not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Accordingly, no portion of the submitted information may be withheld under section 552.104 or section 552.111.

Additionally, we note third party interests are at stake. 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) of the Government Code 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 the

notified third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the notified third party 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 the notified third party may have in the information. As no other exceptions to disclosure have been raised, the district must release the submitted 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 634490

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)