



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2017

Ms. Amanda K. Davis
General Counsel
Dallas County Schools
5151 Samuell Boulevard
Dallas, Texas 75228

OR2017-18649

Dear Ms. Davis:

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# 671072 (ORR# W001431).

Dallas County Schools ("DCS") received a request for all information pertaining to the sale of five specified properties. DCS states it has released some of the requested information. Although DCS takes no position as to whether the submitted information is excepted under the Act, DCS states release of the submitted information may implicate the proprietary interests of Alliance Residential Partners ("Alliance"); Conor Commercial Real Estate ("Conor"); Crescent Acquisitions, L.L.C. ("Crescent"); Exxir Capital, L.L.C. ("Exxir"); Fairfield Residential ("Fairfield"); Oscar Land Acquisitions, L.L.C. ("Oscar"); Realterm NAT ("Realterm"); TDI Real Estate Acquisitions, L.L.C. ("TDIRE"); and Wedgewood Investment Group, L.L.C. ("Wedgewood"). Accordingly, DCS states, and provides documentation showing, it notified the third parties of the request for information and of the 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 Wedgewood. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have reviewed the submitted arguments and the submitted information.

Initially, the requestor contends DCS failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b).

Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (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). The requestor states, and provides documentation showing, he submitted a previous request for the information at issue by e-mail on May 24, 2017. DCS does not indicate it received the request submitted on that date. We note the instant request for information was received by DCS on May 30, 2017. The requestor also claims DCS failed to send a copy of its written comments to him as required by section 552.301(e-1) of the Government Code. *See id.* § 552.301(e-1) (requiring a governmental body that submits written comments to the attorney general under section (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information). This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, based on DCS's representations and the submitted information, we conclude DCS received the request on May 30, 2017. DCS informs us it was closed for business on June 9, 2017. Accordingly, DCS's ten-business-day deadline was June 14, 2017, and its 15-business-day deadline was June 21, 2017. DCS timely submitted its request for a ruling via this office's electronic filing system on June 14, 2017. Further, DCS timely submitted the information required by section 552.301(e) via this office's electronic filing system on June 20, 2017, and that correspondence reveals a copy was sent to the requestor as required by section 552.301(e-1). Upon review, therefore, we conclude DCS complied with the requirements of section 552.301 of the Government Code. Furthermore, we note a compelling reason exists to withhold information for purposes of section 552.302 of the Government Code when third-party interests are at stake or when information is made confidential by another source of law. *See* Gov't Code § 552.302; Open Records Decision No. 150 (1977) (construing predecessor statute). In this instance, we note third-party interests are at stake. Accordingly, we will address the public availability of the submitted information.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the 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

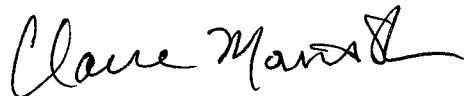
allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, DCS may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104(a) of the Government Code exempts 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. Wedgewood states it has competitors. In addition, Wedgewood states release of the information would cause irreparable harm to Wedgewood and would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Wedgewood has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude DCS may withhold Wedgewood’s information under section 552.104(a) of the Government Code.¹ As no further exceptions to disclosure have been raised, DCS 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

¹As our ruling is dispositive for this information, we need not address Wedgewood’s remaining arguments against its disclosure.

Ref: ID# 671072

c: Requestor
(w/o enclosures)

9 Third Parties
(w/o enclosures)