



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2017

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

OR2017-23153

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# 679089 (ORR Nos. O072417, P081017, D081417, C072417, E072517, D072717, OS080217B, B080317, F080317, 080717, C080717, and W080717).

The Houston Independent School District (the "district") received twelve requests from different requestors for information related to request for proposals number 16-03-23.¹ One request additionally seeks information related to request for proposals numbers 15-11-09 and 15-06-11. The district states it will release information related to request for proposals number 15-06-11. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states, and provides documentation showing, it notified several third parties of the request for information and of the right to

¹The district sought and received clarification of one of the requests for information. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

submit arguments to this office as to why the submitted information should not be released.² *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 reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. 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 district submitted documentation revealing it received a request for the information at issue on July 14, 2017. The district does not inform us it was closed for any business days between July 14, 2017, and August 4, 2017. Accordingly, the district was required to provide the information required by section 552.301(b) by July 28, 2017. Moreover, the district was required to provide the information required by section 552.301(e) by August 4, 2017. However, the district provided the information required by sections 552.301(b) and 552.301(e) through this office's electronic filing system on August 8, 2017. Accordingly, we conclude 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

²The third parties who were notified are Alpha Foods; Barilla America; Bongards Creameries; Brakebush Brothers, Inc.; Cargill Meat Solutions Corp.; Chinese Food Solutions d/b/a Asian Food Solutions; ConAgra Foods, Inc.; Ditta Meat Co.; ES Foods; Foster Poultry Farms; Giorgio Foods, Inc.; Good Source d/b/a Tools For Schools; Goodman Food Product d/b/a Don Lee Farms; Gordon Food Service Inc d/b/a Glazier Foods; Jakes Fine Foods; John Soules Acquisitions, L.L.C., d/b/a Proview Foods; JR Simplot Company; JTM Provisions Company d/b/a Kelloggs Specialty Channels; Lets Do Lunch d/b/a Integrated Food Service; Magic Seasoning Blends, L.L.C.; McCain Foods; MCI Foods, Inc.; Mexilink, Inc.; Nardone Bros Baking Co., Inc.; National Food Group; Omnibus d/b/a Chefs Corner Foods; Padrino Foods, L.L.C.; Prairie Mills Banking Co., L.L.C., d/b/a Bake Crafters Food Co.; Premium Foods, Inc.; Red Gold, L.L.C.; Rich Chicks, L.L.C.; Rich Products; Ruiz Food Products, Inc.; SA Piazza & Associates, L.L.C.; Schrieber Foods International; Schwans Food Service, Inc.; Sunbutter; Tabatchnick Fine Foods, Inc.; Tasty Blend Foods, Inc.; Tasty Brands; The Masters Distribution Company; Truitt Family Foods; Tyson Prepared Foods; Vesar Foods, L.L.C., d/b/a D'Gusto Foods; Advance Pierre Foods; Wallace Packaging, Inc.; and Platinum Packaging Group.

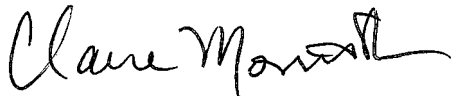
reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because the interests of a third party can provide a compelling reason to withhold information, we will consider whether the district may withhold the submitted information based on the interests of the third parties.

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 any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the 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 the submitted information on the basis of any proprietary interest any of the third parties may have in the information. As no 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tdw

Ref: ID# 679089

c: 12 Requestors

47 Third Parties