



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2019

Ms. Lori J. Robinson
Counsel for Austin Community College
Bickerstaff, Heath, Delgado & Acosta, L. L. P.
Building One, Suite 300
3711 South MoPac Expressway
Austin, Texas 78746

OR2019-18397

Dear Ms. Robinson:

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# 773894 [ORR 1986].

Austin Community College (the "college"), which you represent, received a request for information pertaining to proposals for certain supplies. You state you released some of the requested information to the requestor. Although the college takes no position as to whether the remaining information is excepted under the Act, the college states the release of the remaining information may implicate the proprietary interests of Safeway Supply, Inc. ("Safeway"), Pollock Paper Distributors ("Pollock"), and Bullchase. Accordingly, the college states, and provides documentation showing, it notified these third parties of the request for information and of the right to submit arguments to this office as to why the requested 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 considered the submitted request.

We must address the college's obligations under the Act. Section 552.301 of the Government Code 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(e), a governmental body is required to submit

to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. *Id.* § 552.301(e). As of the date of this letter, you have not submitted a copy or representative sample of the information at issue. Consequently, we find the college failed to comply with the requirements of section 552.301.

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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (Tex. App.—Austin 1990, no writ). However, we note third party interests can provide a compelling reason to overcome the presumption of openness.

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 Safeway, Pollock, or Bullchase explaining why the remaining requested information should not be released. Therefore, we have no basis to conclude Safeway, Pollock, or Bullchase has a protected proprietary interest in the remaining requested 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 college may not withhold the remaining requested information on the basis of any proprietary interest Safeway, Pollock, or Bullchase may have in the information. As no exceptions to disclosure have been raised, the college must release the remaining requested 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,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal flourish extending to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 773894

c: Requestor