



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Ms. Sandra D. Carpenter
General Counsel
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR2019-32582

Dear Ms. Carpenter:

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# 797572 (ORR# 2020-079).

The Round Rock Independent School District (the "district") received a request for pricing and bid tabulations for the district's contracts for grounds maintenance services during a specified time period. The district claims the submitted information is excepted from disclosure under section 552.153 of the Government Code.¹ Additionally, the district indicates release of the submitted information may implicate the proprietary interests of Cats Landscape Services; Integrated Environmental Services; Maldonado Nursey and Landscape; and Pampered Lawns Austin, Inc. Accordingly, the district indicates 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 reviewed the submitted arguments and the submitted information.

Section 552.153 of the Government Code protects proprietary records and trade secrets involved in certain partnerships under chapter 2267 of the Government Code and provides, in part, the following:

¹ Although the district also cites to sections 552.104 and 552.110 of the Government Code in its brief, the district has not provided any arguments to support these exceptions. Therefore, we do not address the applicability of these sections to the submitted information. *See Gov't Code* §§ 552.301, .302.

(a) In this section, “affected jurisdiction,” “comprehensive agreement,” “contracting person,” “interim agreement,” “qualifying project,” and “responsible governmental entity” have the meanings assigned those terms by [s]ection 2267.001.

(b) Information in the custody of a responsible government entity that relates to a proposal for a qualifying project authorized under [c]hapter 2267 is excepted from the requirements of [the Act] if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under [c]hapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under [c]hapter 2267 and contain:

(A) trade secrets of the proposer;

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) work product related to a competitive bid or proposal submitted by the proposer that, if made public before the execution of an interim or comprehensive agreement, would provide a competing proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible government entity or the proposer.

Gov’t Code § 552.153(a)-(b). Section 2267.001(10) of the Government Code provides “qualifying project” means the following:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, technological facility, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) any improvements necessary or desirable to real property owned by a governmental entity.

Id. § 2267.001(10). Further, section 2267.001(11) provides “responsible governmental entity” means “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). Although the district generally states it is a “responsible governmental entity[,]” and the submitted information relates to “construction projects which are facilities available to a governmental entity for public use[,]” the district has failed to demonstrate the applicability of section 552.153(b) to any portion of the submitted information, and the district may not withhold any of the submitted information on that basis.

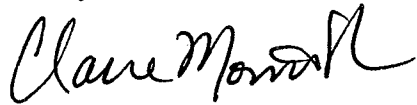
Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from 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. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with the first name "Claire" being the most prominent.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jxd

Ref: ID# 797572

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)