



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2020

Ms. Sandra D. Carpenter  
General Counsel  
Round Rock Independent School District  
1 Chisholm Trail, Suite 400  
Round Rock, Texas 78681

OR2020-10752

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# 818906 (ORR 2020-276, 2020-310, and 2020-322).

The Round Rock Independent School District (the "district") received three requests from different requestors for information pertaining to request for proposals number 20-069, Construction Auditing Services. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.153 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you indicate you notified CBIZ Risk & Advisory Services, LLC; Churchill Cost Consultants, LLC; Experis US, Inc.; Fort Hill Associates, LLC ("Fort Hill"); FTI Consulting, Inc.; Mobile Ed Productions, Inc; RL Townsend & Associates, LLC; and Weaver & Tidwell, LLP ("Weaver") of the request for information and of their 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 Fort Hill and Weaver.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating

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<sup>1</sup> While Fort Hill submitted comments, Fort Hill did not raise any exceptions against disclosure of the submitted information.

to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties at issue. Thus, we have no basis to conclude any of the remaining third parties at issue have a protected proprietary interest in the submitted information. *See generally id.* § 552.110(a)-(b); ORDs 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 any of the submitted information on the basis of any proprietary interest the remaining third parties at issue may have in the information.

Section 552.104(a) of the Government Code exempts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov’t Code § 552.104(a). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the district has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the district may not withhold the information at issue under section 552.104(a).

Section 552.1101 of the Government Code provides, in relevant part:

(a) . . . [I]nformation submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification is excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

- (A) work;
- (B) organizational structure;
- (C) staffing;
- (D) internal operations;
- (E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Gov't Code § 552.1101(a). Weaver asserts disclosure of some of its information would reveal an individual approach to work, staffing, processes, and pricing methodology and give advantage to a competitor. Upon review, we find Weaver has demonstrated the applicability of section 552.1101(a) to the information at issue, which we marked. Accordingly, the district must withhold the information we marked under section 552.1101 of the Government Code.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(b)-(c). Although the district argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110.

Section 552.110(b) of the Government Code states "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See* Gov't Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

(1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

*Id.* § 552.110(a). Weaver argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, we find Weaver has demonstrated the information at issue constitute trade secrets. Accordingly, the district must withhold the information we marked under section 552.110(b) of the Government Code.

Section 552.153 of the Government Code reads, in relevant part, as follows:

(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 Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

...

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

(A) trade secrets of the proposer; [or]

(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[.]

Gov't Code § 552.153(a), (b)(2)(A)–(B). Section 2267.001(10) of the Government Code defines a “qualifying project” as 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, 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 unimproved real estate owned by a governmental entity.

*Id.* § 2267.001(10). Further, section 2267.001(11) defines a “responsible governmental entity” as “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). The district generally asserts it is a “responsible governmental entity” as defined by section 2267.001(11). We note the information at issue pertains to a proposal for construction auditing services. The district does not inform us the information at issue relates to a proposal for a qualifying project that is authorized under chapter 2267 of the Government Code. The district has failed to demonstrate the applicability of section 552.153(b) to any portion of the remaining information. Accordingly, the district may not withhold any of the remaining information under section 552.153 of the Government Code.

Weaver asserts its remaining information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body

must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold the information we marked under section 552.1101 of the Government Code. The district must withhold the information we marked under section 552.110(b) of the Government Code. The district must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 818906

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

9 Third Parties  
(w/o enclosures)