



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 3, 2020

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Counsel  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2020-15321

Dear Mr. Meitler:

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# 829332 (TEA PIR# 41736).

The Texas Education Agency (the "TEA") received a request for all contracts between TEA and a named company during a specified period of time. You state you will release some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of NCS Pearson, Inc. ("Pearson"). Accordingly, you state, and provide documentation showing, you notified Pearson 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 Pearson. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(c) of the Government Code excepts from disclosure "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(c). Pearson argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Pearson has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, TEA must withhold the information we

marked under section 552.110(c).<sup>1</sup> However, we find Pearson has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, TEA may not withhold the remaining information at issue under section 552.110(c).

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 id.* § 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). Pearson also argues some of its information consists of trade secrets subject to section 552.110(b). Upon review, however, we find Pearson has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, TEA may not withhold the remaining information at issue under section 552.110(b).

We note some of the remaining information may be 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, TEA must withhold the information we marked under section 552.110(c) of the Government Code. TEA must release the remaining information; however, any information protected by 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

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<sup>1</sup> As our ruling is dispositive, we need not address Pearson’s remaining argument against disclosure of this information.

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,

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/jlbm

Ref: ID# 829332

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)