



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 5, 2021

Ms. Yesica Antu-Sanchez  
Records Management Officer  
Bexar Appraisal District  
P. O. Box 830248  
San Antonio, Texas 78283-0248

OR2020-19138B

Dear Ms. Antu-Sanchez:

Our office issued Open Records Letter No. 2020-19138A (2020) on October 6, 2020. Since that date, we have received additional information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on October 6, 2020. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 859575 (District Work Order No. 20-15710).

The Bexar Appraisal District (the "district") received a request for three categories of information pertaining to the district's business relationship with a specified company. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code.<sup>1</sup> You also state the release of the submitted information may implicate the proprietary interests of Harris Govern. Accordingly, you state, and provide documentation showing, the district notified Harris Govern 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 id.* § 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 Harris Govern. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup> We note the district failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code, section 552.110 of the Government Code, and the interest of a third party can provide compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.301, .302. Accordingly, we will consider the submitted arguments.

The district argues the submitted information should not be disclosed because the district signed an agreement with Harris Govern to keep the submitted information confidential. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the information falls within an exception to disclosure, the district must release it, notwithstanding any expectations or agreement specifying otherwise.

The district also generally raises section 552.101 of the Government Code for the submitted information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, you have not pointed to any confidentiality provision, nor are we aware of any, that would make any of the submitted information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the district may not withhold any of the submitted information under section 552.101 of the Government Code.

Harris Govern and the district raise section 552.110(b) of the Government Code. Section 552.110(b) 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). Harris Govern argues some of the submitted information consists of trade secrets subject to section 552.110(b). Upon review, we find Harris Govern 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.<sup>2</sup> Although the district argues the remaining information is excepted under section

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<sup>2</sup> As our ruling is dispositive for this information, we need not address the district’s argument against its disclosure.

552.110(b), 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(b) for the remaining information. The remaining information must be released.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/mo

Ref: ID# 859575

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

Ref: ID# 859575

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