



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2020

Ms. Rebecca Bradley  
Counsel for Plano Independent School District  
Abernathy, Roeder, Boyd & Hullett  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75070-1210

OR2020-20383

Dear Ms. Bradley:

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# 840182 (File# 916).

The Plano Independent School District (the "district"), which you represent, received a request for all contracts and budgeted expenditures with Northwest Evaluation Association ("NWEA") during a certain time period. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of NWEA.<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified NWEA of the request for information and of its right to submit arguments to this office as to why the information at issue 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 NWEA. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(c) of the Government Code states:

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<sup>1</sup> Although the district raises section 552.104 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. *See Gov't Code §§ 552.301, .302.*

(c) Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). NWEA argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find NWEA has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked under section 552.110(c) of the Government Code. However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Additionally, we find NWEA has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

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

(a) Except as provided by Section 552.0222, information 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.

(b) The exception to disclosure provided by Subsection (a) does not apply to:

- (1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or
- (2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

*Id.* § 552.1101(a), (b). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). NWEA asserts disclosure of some of its remaining information would reveal an individual approach to its internal operations, processes, discounts, and pricing methodology and give advantage to a competitor. Upon review, we find the remaining information at issue is subject to section 552.0222(b) and section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* §§ 552.0222(b), 552.1101(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find NWEA has failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the district may not withhold any of the remaining information at issue under section 552.1101(a).

In summary, the district must withhold the information we marked under section 552.110(c) of the Government Code. The district must release the remaining 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,

Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/jxd

Ref: ID# 840182

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)