



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2020

Ms. Kendra Walters
Counsel for Beaumont Independent School District
Karczewski Bradshaw Spalding Nichols Lamp Langlois
315 North Church Street
Nacogdoches, Texas 75961

OR2020-24009

Dear Ms. Walters:

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# 844789.

The Beaumont Independent School District (the "district"), which you represent, received a request for all proposals for a specified request for qualifications. You state you are releasing some of the requested information. 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 FBS; Gallagher Benefit Services, Inc.; Higginbotham; HUB International Insurance ("HUB"); McGriff, Seibels & Williams; US Employee Benefits Services Group; and USI Southwest, Inc. ("USI"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 arguments from USI.¹ We have considered the submitted arguments and reviewed the submitted information.

¹ You inform us that FBS, Higginbotham, and HUB do not object to the release of their information.

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the district may not withhold any portion of the submitted information related to those third parties on the basis of any proprietary interest they may have in the 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[.]" *Id.* § 552.110(c). USI argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find USI has demonstrated its 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 indicated under section 552.110(c) of the Government Code; however, to the extent USI's customer information is publicly available on its website, it may not be withheld under 552.110(c) of the Government Code.

We note some of the remaining information appears to 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, the district must withhold the information we indicated under section 552.110(c) of the Government Code; however, to the extent USI's customer information is publicly available on its website, it may not be withheld under 552.110(c) 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/gw

Ref: ID# 844789

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Parties
(w/o enclosures)