



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 21, 2020

Mr. Ronn P. Garcia  
Counsel for Region 17 Education Service Center  
Underwood Law Firm, P.C.  
P.O. Box 16197  
Lubbock, Texas 79490

OR2020-26495

Dear Mr. Garcia:

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# 849683.

The Region 17 Education Service Center (the "center"), which you represent, received two requests from different requestors for award information pertaining to a specified bid solicitation. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of forty-nine third parties.<sup>1</sup> Accordingly, you state, and provide documentation demonstrating, the center notified these interested third parties 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 Lux and

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<sup>1</sup> The third parties at issue are as follows: Bake Crafters Food Company; Basic American Foods; Bongards Creameries; Brookwood Farms, Inc.; Buena Vista Foods; Cargill Kitchen Solutions, Inc.; Cargill Meat Solutions Corp.; Cavendish Farms, Inc.; Channel Fish Processing Co., Inc.; Chef's Corner Foods; Comida Vida; Conagra Foods; Don Lee Farms; ES Foods; Foster Farms; Fresh Innovations, LLC; High Liner Foods (USA), Inc.; Idahoan Foods; Integrated Food Service; J&J Snack Foods; J.R. Simplot Company; Jennie-O Turkey Store Sale, LLC; JM Smucker Company; JSB Industries d/b/a Muffin Town; JTM Provisions Co., Inc.; Kraft Heinz North America; Land O'Lakes, Inc.; Lux Bakery, Inc. ("Lux"); McCain Food USA, Inc.; MCI Foods, Inc.; Michael Foods, Inc. ("Michael Foods"); Nardone Brothers Baking Co.; National Food Group; Out of Shell, LLC/Yang's 5th Taste; Peterson Farms Fresh, Inc.; Pilgrim's Pride Corp.; Red Gold, LLC; Rich Chicks, LLC; Rich Products Corp.; Rodriguez Foods, LTD.; Rose & Shore; SA Piazza & Assoc., LLC; Schwan's Food Service, Inc.; Tasty Brands; The Father's Table; Tools for Schools; Trident Seafoods Corp.; Tyson Sales & Distribution, Inc.; and Uno Foods, Inc.

Michael Foods. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) 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 any of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the center may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

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). Lux and Michael Foods argue some of the information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Michael Foods has demonstrated portions of its information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the center must withhold the information we marked and indicated under section 552.110(c) of the Government Code.<sup>2</sup> However, we find Lux has failed to provide specific factual evidence demonstrating its information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the center may not withhold any portion of the remaining information under section 552.110(c) of the Government Code.

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.

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<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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

In summary, the center must withhold the information we marked and indicated under section 552.110(c) of the Government Code. The center 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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jxd

Ref: ID# 849683

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

c: 49 Third Parties  
(w/o enclosures)