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ATTORNEY GENERAL OF TEXAS

October 27, 2020

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

OR2020-26903

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# 850745.

The Region 17 Education Service Center (the "center"), which you represent, received two requests from different requestors for bid award information pertaining to three specified proposal numbers. 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 numerous third parties.¹ Accordingly, you state, and provide documentation showing, you notified the third parties 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)

¹ Asian Food Solutions, Inc.; Alpha Foods Company; Bake Crafters Food Company; Basic American Foods; Bimbo Bakeries; 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; Dipping Dots, LLC; Don Lee Farms; ES Foods; Foster Farms; Fresh Innovations, LLC; Gandy's Dairies; Hawaiian Fruit Freeze; 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; JMT Provisions Co., Inc.; Klement Ice Cream; Kraft Heinz North America; Labatt Food Service; Land O'Lakes, Inc.; Lux Bakery, Inc. ("Lux"); McCain Food USA, Inc.; MCI Foods, Inc.; Michael Foods, Inc. ("Michael"); Nardone Brothers Baking Co.; National Food Group; Out of Shell, LLC a/k/a Yang's 5th Taste; Peterson Farms Fresh, Inc.; Pilgrim's Pride Corp.; Quintero's Meat Company; Red Gold, LLC; Rich Chicks, LLC; Rich Products Corp.; Rodriguez Foods, LTD; Rose & Shire; SA Piazza & Assoc., LLC; Schwan's Food Service, Inc.; Tabatchnick Fine Foods, Inc.; Tasty Brands; The Father's Table; Tools for Schools; Trident Seafoods Corp.; Tyson Sales & Distribution, Inc.; and Uno Foods, Inc.

(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 Michael. We have reviewed the submitted arguments and 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 only received comments from Lux and Michael explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest 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 center may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties 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[.]" *See id.* § 552.110(c). Lux and Michael argue their information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Michael has demonstrated portions of the 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 under section 552.110(c) of the Government Code.² However, we find Lux 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, the center may not withhold any of the remaining information at issue 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.

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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

In summary, the center must withhold the information we marked 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 850745

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)