



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2020

Ms. Ingrid Gunter
Coordinator/Paralegal
Lewisville Independent School District
P.O. Box 217
Lewisville, Texas 75067

OR2020-27358

Dear Ms. Gunter:

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# 852061 (ID# 1920-253).

The Lewisville Independent School District (the "district") received a request for all applications and resumes pertaining to a specified district position. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the information at issue may implicate the proprietary interests of eleven named individuals. Accordingly, you state, and provide documentation demonstrating, you notified these individuals 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) (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 one of the named individuals. 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) 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 any of the remaining named individuals explaining why the submitted information should not be released. Thus, we have no basis to conclude any of the remaining named individuals has a protected a 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). Therefore, the district

may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining named individuals 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[.]” *See id.* § 552.110(c). One of the named individuals generally asserts his information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find the named individual has failed to provide specific factual evidence demonstrating the 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 portion of the submitted 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 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). One of the named individuals argues his information at issue consists of trade secrets subject to section 552.110(b). However, upon review, we find the named individual has failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret. Therefore, the district may not withhold any portion of the submitted information under section 552.110(b) of the Government Code.

One of the named individuals generally asserts section 552.1101. Section 552.1101(a) excepts from disclosure “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[.]*” *Id.* § 552.1101(a) (emphasis added). Upon review, we find the named individual has failed to demonstrate the applicability of section 552.1101(a) to any portion of the information at issue. Accordingly, the district may not withhold any of the submitted information under section 552.1101(a) of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided from the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address

is specifically excluded by subsection (c).¹ *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, the general e-mail address of a business, an Internet website address, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address that a governmental entity maintains for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Accordingly, the district must withhold the e-mail addresses of members of the public we indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/rm

Ref: ID# 852061

Enc. Submitted documents

c: Requestor
(w/o enclosures)

11 Interested Parties
(w/o enclosures)

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).