



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2020

Ms. Trilby Argubright
Counsel for the Rockwall Independent School District
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.
105 Decker Court, Suite 600
Irving, Texas 75062

OR2020-29859

Dear Ms. Argubright:

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# 854698.

The Rockwall Independent School District (the "district"), which you represent, received a request for all records pertaining to a named individual. We understand you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted from disclosure under the Act, you state release of the submitted information may implicate the proprietary interests of Scenario Learning, L.L.C. d/b/a Vector Solutions ("Vector"). Accordingly, you state, and provide documentation demonstrating, you notified Vector 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 Vector.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, Vector argues the information at issue is confidential pursuant to the contract between Vector and the district. We note information is not confidential under the Act

¹ Although Vector raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume Vector has withdrawn its claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, the district must release it, notwithstanding any expectation or agreement specifying otherwise.

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.” Gov’t Code § 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.

Id. § 552.110(a). Vector argues the submitted information consists of trade secrets subject to section 552.110(b). Upon review, we find Vector has failed to provide specific factual evidence demonstrating any portion of the submitted information is a trade secret. Therefore, the district may not withhold any of the submitted information under section 552.110(b) of the Government Code.

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). Vector also argues its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Vector has failed to provide specific factual evidence demonstrating the submitted information constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any of the submitted information under section 552.110(c) of the Government Code.

Section 552.1101(a) of the Government Code 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 Vector has failed to demonstrate the applicability of section 552.1101(a) to its information. Accordingly, the district may not withhold any of the submitted information under section 552.1101(a) of the

Government Code. As no further exceptions to disclosure have been raised, the district must release the submitted 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# 854698

c: Requestor

Third Party