



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2020

Ms. Elizabeth G. Neally
Attorney for the Schertz-Cibolo-Universal City Independent School District
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P. O. Box 460606
San Antonio, Texas 78246

OR2020-31290

Dear Ms. Neally:

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# 858223.

The Schertz-Cibolo-Universal City Independent School District (the "district"), which you represent, received a request for proposal and contract information pertaining to a specified RFP. You state the district will redact certain information pursuant to section 552.136(c) of the Government Code. 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 third parties.¹ 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 TIN and Universe. We have considered the submitted arguments and reviewed the submitted 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

¹Catholic Charities Diocese of Fort Worth Inc. d/b/a Translation & Interpretation Network ("TIN"); Ceiba Enterprises Inc. d/b/a Gracor Language Services Inc.; Deaf Interpreter Services, Inc.; HolaDoctor, Inc.; Idea Language Services, LLC d/b/a Idea Translations; Daniel Shamebo Sabore d/b/a/ Languages Translation Services; Spanish English and Foreign Languages of America, Inc.; and Universe Technical Translation, Inc. ("Universe").

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

Universe raises section 552.104 of the Government Code for some of its information at issue. Section 552.104 excepts from disclosure information “if a *governmental body* demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address Universe’s arguments under section 552.104 of the Government Code.

TIN and Universe raise section 552.110 of the Government Code for some of its information at issue.² Section 552.110(b) of the Government Code states, “[e]xcept as provided by [s]ection 552.0222, 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.

Id. § 552.110(a). Section 552.110(c) of the Government Code states:

Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

² Although TIN raises former section 552.110(b) of the Government Code in its brief, we understand TIN to raise current section 552.110(c) of the Government Code based on the substance of its arguments.

Id. § 552.110(c). Upon review, we find TIN and Universe have demonstrated portions of the information at issue, including Universe's customer information, constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked and, to the extent it is not publicly available on Universe's website, its customer information under section 552.110(c) of the Government Code.³ However, we find Universe has 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. Further, we find Universe has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the district may not withhold any of the remaining information at issue under section 552.110 of the Government Code.

In summary, the district must withhold the information we marked and, to the extent it is not publicly available on Universe's website, its customer information under section 552.110(c) of the Government Code. 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/rm

Ref: ID# 858223

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.