



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2020

Ms. Leticia D. McGowan
Assistant General Counsel
Dallas Independent School District
9400 North Central Expressway
Dallas, Texas 75231

OR2020-32290

Dear Ms. McGowan:

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# 859671 (Ref. No. R019382-030920).

The Dallas Independent School District (the "district") received a request for the bid award recap pertaining to two specified bids. The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of numerous third parties. Accordingly, the district states, and provides documentation showing, it notified these 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.¹ See Gov't Code § 552.305(d); see also Open Records Decision No. 542

¹ The district notified: Ajinomoto Foods North America, Inc.; Alpha Food Co.; Badia Spice Co.; Bake Crafters Food Co.; Barilla America; Braun Beef Co.; Bridgford Foods; Buena Vista Foods; Bush Brothers & Company; Cebev, L.L.C. d/b/a Juice Bowl; Chef's Corner Foods d/b/a Omnibus Trading Corp.; Chinese Food Solutions Inc. d/b/a Asian Food Solutions; Churchfield Trading Co.; Cloverdale Foods; Cole's Quality Foods; Comida Vida Inc.; ConAgra Foodservice Inc.; Custom Culinary Foods; Dave's Baking Co.; Dole Packaged Foods; Echo Lake Foods, Inc.; E S Foods; Fat Cat Bakery; Foster Poultry Farms; General Mills, Inc.; Gregory Packaging, Inc.; In Harvest Foods; J&J Snack Foods Corp.; JR Simplot Co.; Jones Dairy Farms; JSB Industries, Inc. d/b/a Muffin Town; JTM Provisions Co., Inc.; Kellogg's Specialty Channels; Ken's Foods; Kikkoman Sales USA; Land O' Lakes; Live Smart Foods, L.L.C.; Magic Seasoning Blends, L.L.C.; M.C.I. Foods Inc; Mexilink, Inc.; Michael Foods, Inc. ("Michael Foods"); MinMor Industries, Inc. d/b/a Notables; MMI Culinary, Inc.; Nardone Brothers Baking Corp.; National Food Group; Out of the Shell, L.L.C. d/b/a Yang's 5th Taste; Padrino Foods, Inc.; Par-Way Group, Inc. d/b/a Par-Way Tryson Co.; Perdue Foods, L.L.C.;

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

Initially, we note Tyson argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the district has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the district submitted as responsive to the request for information.²

Next, 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 id.* § 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 submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests 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 district may not withhold the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Next, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-11418 (2020). In that ruling, we determined, in relevant part, the district must release some of the information at issue. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007. The district raises section 552.104 of the Government Code for the submitted information; however, we note section 552.104 does not prohibit the release of information or make information confidential. *See id.* § 552.104. Thus, to the extent any of the information at issue was previously released pursuant to Open Records Letter

Pilgrims Pride Corp.; Post Consumer Brands; Red Gold, L.L.C.; Resner's Fine Foods; Robbins Sales Co., Inc.; Rodriguez Foods; Ruiz Food Products, Inc.; Sargent Food Co.; Schreiber Foods International, Inc.; Shaver Foods, L.L.C.; Sky Blue Foods; Smithfield Package Meats Sales Corp.; Sugar Foods Corp.; Super Bakery, Inc.; SW Foods; Sysco North Texas; Tabatchnick Fine Foods, Inc.; Tasty Brand Foods; The C.D. Hartnett Co.; The Father's Table; The Good Bean Foods; The Masters Distribution Systems; TMI Trading, Inc.; Tree Top, Inc.; Tyson Foods ("Tyson"); Vesar Foods, L.L.C. d/b/a D'gusto Foods; and Wawona Frozen Foods.

² As we are able to make this determination, we need not address Tyson's arguments against disclosure of this information.

No. 2020-11418, the district may not now withhold the previously released information under section 552.104 of the Government Code. However, we will address the district's argument under section 552.104 for any information not subject to the prior ruling.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the district has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the district may not withhold the information at issue under section 552.104(a) of the Government Code.

Section 552.110(c) of the Government Code states:

(c) 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].

Gov't Code § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Michael Foods argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Michael Foods has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we have marked under section 552.110(c) of the Government Code.³ However, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(c). Therefore, the district may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.1101 of the Government Code provides, in relevant part:

(a) Except as provided by Section 552.0222, 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 is

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

excepted from the requirements of Section 552.021 if the vendor, contractor, potential vendor, or potential contractor that the information relates to demonstrates based on specific factual evidence that disclosure of the information would:

(1) reveal an individual approach to:

(A) work;

(B) organizational structure;

(C) staffing;

(D) internal operations;

(E) processes; or

(F) discounts, pricing methodology, pricing per kilowatt hour, cost data, or other pricing information that will be used in future solicitation or bid documents; and

(2) give advantage to a competitor.

Id. § 552.1101(a). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.1101(a) does not apply. *See id.* § 552.0222(b). Michael Foods also asserts disclosure of some of its information would reveal an individual approach to pricing information and give advantage to a competitor. Upon review, we find the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.1101(a). *See id.* (listing certain types of information not excepted under section 552.1101). Therefore, the district may not withhold any of the remaining information at issue under section 552.1101(a) of the Government Code.

In summary, the district must withhold the information we have marked 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/mo

Ref: ID# 859671

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)