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ATTORNEY GENERAL OF TEXAS

March 25, 2022

Ms. Rebecca Bradley
Counsel for Plano Independent School District
Abernathy, Roeder, Boyd & Hullett
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2022-08774

Dear Ms. Bradley:

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# 935470 (PIR No. 1234).

Plano Independent School District (the "district"), which you represent, received a request for contract award information and bid submissions pertaining to real estate services during a defined period of time. You indicate the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.1101 of the Government Code. You state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state you notified CBRE, Inc., ("CBRE") and Sunset Properties ("Sunset") of the request for information and of the 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). You inform us CBRE does not object to disclosure of its information. We have received arguments from Sunset. We have considered the submitted arguments and reviewed the submitted information.

You claim the submitted information is excepted under sections 552.110 and 552.1101 of the Government Code; however, these exceptions are designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code §§ 552.110(b)-(c), .1101(c). Thus, we do not address the district's arguments under sections 552.110 or 552.1101 of the Government Code.

Section 552.110(c) of the Government Code exempts 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). Sunset argues the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Sunset 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 marked under section 552.110(c) of the Government Code.¹ However, we find Sunset has failed to provide specific factual evidence demonstrating any of the remaining 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 remaining 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 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). Sunset argues the remaining information consists of trade secrets subject to section 552.110(b). Upon review, we find Sunset has failed to provide specific factual evidence demonstrating any portion of the remaining information is a trade secret. Therefore, the district may not withhold any of the remaining information under section 552.110(b) of the Government Code.

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

- (a) . . . [I]nformation 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 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:

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

- (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). Sunset asserts disclosure of the remaining information would reveal an individual approach to work, organizational structure, staffing, internal operations, and processes and give advantage to a competitor. However, we find Sunset has failed to provide the specific factual evidence necessary to withhold any of the remaining information under section 552.1101(a) of the Government Code, and the district may not withhold it on that basis.

In summary, the district must withhold the information we marked under section 552.110(c) of the Government Code and 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/jm

Ref: ID# 935470

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)