



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 7, 2022

Mr. Stuart W. Bowen, Jr.
General Counsel
Austin Independent School District
4000 South IH 35 Frontage Road
Austin, Texas 78704

OR2022-10284

Dear Mr. Bowen:

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# 941088.

The Austin Independent School District (the "district") received a request for proposals submitted in response to two specified requests for proposals.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Candeo, LLC, d/b/a Austin Learning Center ("ALC"); Kesson Group Services, Inc., d/b/a Skooli ("Skooli"); Studypad, Inc., d/b/a Splashlearn; Tutor Me Education; University Instructors, LLC; and Varsity Tutors for Schools, LLC ("Varsity). Accordingly, you state, and provide documentation showing, you notified these interested 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. *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 ALC, Skooli, and Varsity. We have considered the submitted arguments and reviewed the submitted information.

¹ You state the district sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Initially, we note the district has redacted portions of the submitted information. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from ALC, Skooli, and Varsity. Thus, we have no basis to conclude any of the remaining interested third parties has a protected 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). Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining interested third parties may have in the information.

ALC asserts section 552.101 of the Government Code for its information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, ALC has failed to direct our attention to any law, nor are we aware of any law, under which any of its information is considered to be confidential for purposes of section 552.101. Therefore, none of ALC's information may be withheld under section 552.101 of the Government Code.

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* 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). 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].

Id. § 552.110(c). ALC, Skooli, and Varsity argue their information at issue consists of trade secrets subject to section 552.110(b). ALC and Skooli also argue their information at issue consists of commercial or financial information subject to section 552.110(c). Upon review, we find Varsity has demonstrated its information at issue constitutes trade secrets. Accordingly, the district must generally withhold the information we have marked under section 552.110(b) of the Government Code. However, to the extent any of the customer information Varsity seeks to withhold has been made available to the public by Varsity, including but not limited to on its website or social media accounts, such information is not confidential under section 552.110. Further, we find ALC and Skooli have failed to provide specific factual evidence demonstrating their information at issue is a trade secret or 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 at issue under section 552.110(b) or 552.110(c) 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:

(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.

Gov't Code § 552.1101(a). Skooli and ALC assert disclosure of their information at issue would reveal an individual approach to their work, organizational structure, staffing, internal operations, and pricing and give advantage to a competitor. Upon review, we find Skooli has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the district must generally withhold the information we have marked under section 552.1101 of the Government Code. However, to the extent any of the customer information Skooli seeks to withhold has been made available to the public by Skooli, including but not limited to on its website or social media accounts, such information is not confidential under section 552.1101. Further, we find Skooli and ALC failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is subject to section 552.1101(a). Therefore, the district may not withhold any of the remaining information at issue under section 552.1101(a).

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the district must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

We note some of the remaining information may be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must generally withhold the information we have marked under section 552.110(b) of the Government Code. However, to the extent any of the customer information Varsity seeks to withhold has been made available to the public by Varsity, including but not limited to on its website or social media accounts, such information is not confidential under section 552.110. The district must generally withhold the information we have marked under section 552.1101 of the Government Code. However, to the extent any of the customer information Skooli seeks to withhold has been made available to the public by Skooli, including but not limited to on its website or social media accounts, such information is not confidential under section 552.1101. The district must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The district must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

² 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).

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 941088

Enc. Submitted documents

c: Requestor
(w/o enclosures)