



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2022

Mr. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 Congress Avenue  
Austin, Texas 78701-1494

OR2022-14546

Dear Mr. Meitler:

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# 946193 (TEA PIR # 52108).

The Texas Education Agency (the "agency") received a request for five categories of information pertaining to sixteen specified contracts. You state the agency will release some information. 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. Accordingly, you state, and provide documentation showing, you notified Ed Direction; Kitamba, Inc. ("Kitamba"); Maya Consulting, LLC; Safal Partners; Schoolkit, LLC ("Schoolkit"); and Tenet Leadership 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 Ed Direction, Kitamba, and Schoolkit. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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* Gov't Code § 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 their

information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have 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 agency may not withhold any of the information at issue on the basis of any proprietary interest the remaining third parties may have in it.

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 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.

- (b) The exception to disclosure provided by Subsection (a) does not apply to:

- (1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; or

- (2) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

*Id.* § 552.1101(a), (b). 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). Ed Direction, Kitamba, and Schoolkit assert disclosure of some of their information would reveal an individual approach to work, organizational structure, internal operations, processes, or pricing methodology and give advantage to a competitor. Upon review, we find Ed Direction has demonstrated the applicability of section 552.1101(a) to some of the information at issue. Accordingly, the agency must withhold Ed Direction’s client information under section 552.1101(a) of the Government Code; however, to the extent the client information is made available to the public by Ed Direction, including but not limited to on its website or social media accounts, it may not be withheld under 552.1101(a). Nevertheless, we find some of 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.* § 552.0222(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find Ed Direction; Kitamba, and Schoolkit have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is subject to section 552.1101(a). Therefore, the agency may not withhold any of the remaining information at issue under section 552.1101(a).

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.” *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].

*Id.* § 552.110(c). Ed Direction argues some of its remaining information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). However, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110(b). Additionally, we find Ed Direction has failed to provide specific factual evidence demonstrating the 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 agency may not withhold any of the information at issue under section 552.110(b) or 552.110(c) of the Government Code.

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.<sup>1</sup> *See* Gov't Code § 552.130. Accordingly, the agency must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

We note some of the materials at issue may be protected by copyright. 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 agency must withhold Ed Direction's client information under section 552.1101(a) of the Government Code; however, to the extent the client information is made available to the public by Ed Direction, including but not limited to on its website or social media accounts, it may not be withheld under 552.1101(a). The agency must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. The agency must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jm

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 946193

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

6 Third Parties