



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2022

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
Hattie Mae Educational Support Center
4400 West 18th Street
Houston, Texas 77092-8501

OR2022-18882

Dear Ms. Ellison:

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# 956187 (Ref. No. F040622).

The Houston Independent School District (the "district") received a request for two specified contracts. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).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 Garro Behavior Consulting ("Garro") and a named individual. 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.² See Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); see

¹ The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

² As of the date of this letter, we have not received any comments from the named individual explaining why any portion of the submitted information should not be released to the requestor.

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 Garro. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note an individual's name, address, and phone number are generally not private information under common-law privacy. *See* Open Records Decision No. 455 at 7 (home addresses and telephone numbers not protected under privacy). Garro asserts some of the submitted information is protected by common-law privacy. Upon review, however, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and the district may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

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 excepts 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). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See*

³ Although the named individual does not raise section 552.101 of the Government Code in conjunction with common-law privacy in their brief, we understand them to assert this exception based on the substance of their argument. Further, although the named individual also raises section 552.113 and 552.131 of the Government Code, they make no arguments to support these exceptions. Therefore, we assume they withdrawn their claim that these sections apply to the submitted information. *See* Gov’t Code §§ 552.301, .302.

id. § 552.0222(b). Garro argues some of their information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, 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. Additionally, we find Garro 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 district may not withhold any of the 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.

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). Garro asserts disclosure of some of their information would reveal an individual approach to pricing and give advantage to a competitor. Upon review, however, we find some of the information at issue is subject to section 552.1101(b) and may not be withheld on the basis of section 552.1101(a). *See id.* § 552.1101(b) (listing certain types of information not excepted under section 552.1101). Additionally, we find Garro has failed to provide the specific factual evidence necessary to withhold any of the information at issue under section 552.1101(a), and the district may not withhold it on that basis.

Section 552.147 of the Government Code exempts from disclosure the social security number of a living person.⁴ *Id.* § 552.147. Upon review, we agree the district may withhold the social security number in the submitted information under section 552.147 of the Government Code.

In summary, the district may withhold the social security number in the submitted information under section 552.147 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 956187

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ Although Garro does not raise section 552.147 in its brief, we understand it to assert this exception based on the substance of their argument.