



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2022

Mr. Vincent Harding
Assistant General Counsel
Aldine Independent School District
2520 W.W. Thorne Boulevard
Houston, Texas 77073

OR2022-20588

Dear Mr. Harding:

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# 957691.

The Aldine Independent School District (the "district") received a request for pay applications related to a particular bond.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 FMG Construction, L.L.C. ("FMG"). Accordingly, you state, and provide documentation showing, you notified FMG of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.² *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 FMG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note FMG objects to disclosure of information the district has not submitted to this office for review. This ruling does not address information that was not submitted by

¹ As you have not submitted a copy of the written request for information, we take our description of the request from your brief.

² We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness. *See id.* §§ 552.007, .302, .352. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the district's violation of section 552.301 in requesting this decision.

the district and is limited to the information the district has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

FMG raises section 552.104 of the Government Code for a portion of its information. Section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information 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) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov't Code § 552.104(a). Therefore, we do not address FMG's arguments under section 552.104.

FMG raises section 552.110 of the Government Code for its information at issue. Section 552.110(b) 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 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). 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). Upon review, we find some of the information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Additionally, we find FMG has failed to provide specific factual evidence demonstrating any portion of the rest of the submitted information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Further, we find FMG has

failed to provide specific factual evidence demonstrating any portion of the rest of the submitted information at issue is a trade secret. Therefore, the district may not withhold any portion of the submitted information under section 552.110 of the Government Code. The district must release the submitted 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/eb

Ref: ID# 957691

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)