



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2022

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

OR2022-20859

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# 959786 (Ref. No. Y042222).

The Houston Independent School District (the "district") received a request for information related to a specified request for proposals, including the winning bid, bid tabulations, and related financial information. You claim some of the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Atlantic Petroleum & Mineral Resources, Inc.; Mansfield Oil Company of Gainesville, Inc.; Petroleum Traders Corporation; Pinnacle Petroleum, Inc.; Southern Counties Oil Co., a California Limited Partnership d/b/a/ SC Fuels; and Sun Coast Resources, Inc. ("Sun Coast"). Accordingly, you state, and provide documentation showing, you notified these 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 Sun Coast. We have considered the submitted arguments and reviewed the submitted information, a portion of which is a representative sample of information.¹

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

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 info relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, 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 district may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104 of the Government Code 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). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). In *Boeing*, the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See id.* 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, although Sun Coast raises section 552.104 for its information, we do not address Sun Coast's arguments under this exception. Further, after review of the information at issue and consideration of the district's arguments, we find you have established the release of Exhibit 2 and Exhibit 3 would harm the district's interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which the district has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Thus, we conclude the district may withhold Exhibit 2 and Exhibit 3 under section 552.104(a).²

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

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(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). Sun Coast argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Sun Coast 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. However, we find Sun Coast failed to demonstrate the applicability of section 552.110(c) to the remaining information. *See id.* § 552.0222. Therefore, the district may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code.

Section 552.136(b) of the Government Code provides, “[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 government body is confidential.”³ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the district must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

In summary, the district may Exhibit 2 and Exhibit 3 under section 552.104(a). The district must withhold the information we marked under section 552.110(c) of the Government Code. The district must withhold all insurance policy numbers within the remaining information under section 552.136 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->

³ 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).

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Sincerely,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/eb

Ref: ID# 959786

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)