



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 18, 2022

Ms. Leah Wingerson  
Counsel for the Coppell Independent School District  
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OR2022-24773

Dear Ms. Wingerson:

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# 964244 [ORR R001685].

The Coppell Independent School District (the "district"), which you represent, received a request for information pertaining to specified leases and agreements. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state the release of the submitted information may implicate the proprietary interests of Datamax Inc.; Imagenet Consulting; Premiere Systems Inc.; Ricoh USA, Inc.; Sharp Electronics Corporation ("Sharp"); Toshiba Business Solutions; and Xerox Business Solutions Southwest. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Sharp. 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 the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party 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 portion of the submitted information on the basis of any proprietary interest any of the remaining third parties may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, 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.” Gov’t Code § 552.104(a). 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). After review of the information at issue and consideration of the arguments, we find the district has failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the district may not withhold the information at issue under section 552.104(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). 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). Sharp argues some of the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Sharp has demonstrated some of the information at issue, which we marked, constitutes 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.<sup>1</sup> However, we find some of the remaining information at issue is subject to section 552.0222(b) and Sharp has failed to provide specific factual evidence demonstrating the rest of the remaining information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Therefore, the district may not withhold any of the remaining information at issue under section 552.110(c) of the Government Code. The remaining information must be released.

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<sup>1</sup> As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

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,

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/jm

Ref: ID# 964244

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)