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ATTORNEY GENERAL OF TEXAS

September 21, 2022

Mr. Ronn P. Garcia
Counsel for Region 17 Education Service Center
Underwood Law Firm, P.C.
P.O. Box 16197
Lubbock, Texas 79490

OR2022-29080

Dear Mr. Garcia:

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# 973690.

The Region 17 Education Service Center (the "center"), which you represent, received a request for information pertaining to CP-SY20-21, USDA Commodity Processed Products. 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.¹ Accordingly, you state, and provide documentation showing, you notified numerous 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*

¹ Albie's Foods, Inc.; Alpha's Food Company; Asian Food Solutions, Inc.; Bake Crafters Food Company; Basic American Foods; Bimbo Bakeries USA; Bongards' Creameries; Brookwood Farms, Inc.; Buena Vista Foods; Butterball, LLC; Cargill Kitchen Solutions, Inc.; Cargill Meat Solutions Corp.; Cavendish Farms, Inc.; Channel Fish Processing Co., Inc.; Chefs Corner Foods; Comida Vida, Inc.; ConAgra Foods; Del Monte Food Service; Don Lee Farms; Fitz Foodz; Foster Poultry Farms; Fresh Innovations, LLC; Garcia Foods, Inc.; Gold Creek Foods; Good Source Solutions, Inc, d/b/a/a Tools for Schools; High Liner Foods (USA), Inc.; House of Reaford Farms, Inc.; Idahoan Foods LLC; Integrated Food Service; J&J Snack Foods Corp.; J.R. Simplot Company; Jennie-O Turkey Store Sale, LLC; JSB Industries d/b/a Muffin Town; JTM Provisions Co., Inc.; Klement Ice Cream; Kraft Heinz North America; Lamb Weston; Land O'Lakes, Inc.; Lithouse, Inc.; Lux Bakery, Inc.; Maid-Rise Speciality Foods; McCain Foods; MCI Foods, Inc.; Michael Foods, Inc. ("Michael"); Mrs. Clark's Foods; Nardone Bros Baking Co.; National Food Group, Inc.; Peterson Farms Fresh, Inc.; Pilgrim's Pride Corp.; Preferred Meal Systems; Red Gold, LLC; Revolutions Foods; Rich Chicks, LLC; Rich Products Corp.; Rose & Shore; SoloFresco Brands; Tasty Brands; and The Father's Table.

§ 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 Michael. We have considered the submitted arguments and reviewed the submitted information.²

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 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 center may not withhold any of the information at issue on the basis of any proprietary interest any of the remaining third parties may have in it.

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). Michael argues some of its information consists of commercial or financial information subject to section 552.110(c). Upon review, we find Michael has demonstrated its pricing information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the center must withhold Michael's pricing information under section 552.110(c) of the Government Code.³

In summary, the center must withhold Michael's pricing information under section 552.110(c) of the Government Code. The center 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

² We note the submitted information includes the requestor's company's information. As we assume the requestor does not seek access to the requestor's own proposal, we do not address the public availability of ES Foods's information.

³ As our ruling on this information is dispositive, we need not address Michael's remaining argument against disclosure.

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/mo

Ref: ID# 973690

Enc. Submitted documents

c: Requestor

Third Party