



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2022

Ms. Amanda M. Bigbee
General Counsel
Keller Independent School District
350 Keller Parkway
Keller, Texas 76248

OR2022-36577

Dear Ms. Bigbee:

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# 982184 (KISD PIR0002232).

The Keller Independent School District (the "district") received a request for contracts and proposal documents relating to two specified companies. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of ProActRx ("ProAct") and United HealthCare Services, Inc. ("United"). Accordingly, the district states, and provides documentation showing, it notified each third party 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. *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 ProAct and United. We have reviewed the submitted information and the submitted arguments.

Initially, we note United argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the district has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information

requested). Accordingly, this ruling is limited to the information the district submitted as responsive to the request for information.¹

Section 552.110(b) of the Government Code states “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). ProAct argues its information consists of trade secrets subject to section 552.110(b). Upon review, we find ProAct has demonstrated portions of the information at issue constitute trade secrets. Accordingly, the district must withhold the information we have marked under section 552.110(b) of the Government Code. However, we find ProAct has failed to provide specific factual evidence demonstrating any portion of the remaining information at issue is a trade secret. Therefore, the district may not withhold any of the remaining information at issue under section 552.110(b).

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold the information we have marked under section 552.110(b) of the Government Code. The district must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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

¹ As we are able to make this determination, we need not address United’s argument against disclosure of this information.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 982184

Enc. Submitted documents

c: Requestor
(w/o enclosures)