



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2022

Ms. Christie Hobbs
General Counsel
Northwest Independent School District
2001 Texan Drive
Justin, Texas 76247

OR2022-38962

Dear Ms. Hobbs:

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# 989862 (ORR# 23-301).

The Northwest Independent School District (the "district") received a request for certain responses to a specified proposal and contract with named company. The district claims some of the submitted information is excepted from disclosure under section 552.136 of the Government Code. The district also states release of the submitted information may implicate the proprietary interests of AlphaBEST Education, Inc. ("AlphaBEST") and KCE Champions LLC ("Champions"). Accordingly, the district states, and provides documentation showing, it notified AlphaBEST and Champion 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(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 reviewed the submitted arguments and the submitted information.

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). We have not received comments from Champions explaining why the submitted information should not be released. Therefore, we have no basis to conclude Champions 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 the submitted information on the basis of any proprietary interest Champion may have in the information.

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). 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). AlphaBEST states the information at issue consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find AlphaBEST has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, to the extent AlphaBEST’s customer information is not made available to the public by AlphaBEST, including but not limited to on their respective company websites or social medial accounts, the district must withhold AlphaBEST’s customer information under section 552.110(c) of the Government Code. However, to the extent AlphaBEST’s customer information is made available to the public by AlphaBEST, including but not limited to on their respective company websites or social media accounts, it may not be withheld under section 552.110. Regardless, the district must withhold the information we marked 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 governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the district must withhold the insurance policy numbers you marked under section 552.136 of the Government Code.

In summary, to the extent AlphaBEST’s customer information is not made available to the public by AlphaBEST, including but not limited to on their respective company websites or social medial accounts, the district must withhold AlphaBEST’s customer information under section 552.110(c) of the Government Code. The district must withhold the information we marked under section 552.110(c) of the Government Code. The district must withhold the insurance policy numbers you marked 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-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,

Anthony Crabtree
Attorney
Open Records Division

A1C/eb

Ref: ID# 989862

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)