



May 1, 2002

Mr. Therold I. Farmer
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR2002-2280

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162176.

The Lago Vista Independent School District (the "district"), which you represent, received a request for:

1. Any and all correspondence to or from BLGY and [district] board member(s) and/or staff or administration since November 1, 2001 (including faxes, emails and all forms of written communications).
2. Complete summary or itemized list of any and all bills and charges from Peter Lowe and any associates since May 1, 2001.
3. Total budgeted or anticipated cost for Public Input Survey reference (sic) by Brian Clark at 1/22/2 (sic) Board Meeting including but not limited to printing, envelopes and all supplies, postage and all associated staff man time for analysis, reporting and presentation.
4. Complete summary or itemized list of anticipated mandated costs [the district] is going to have to fund this year out of M&O. These costs were referenced by Jack Clark in his presentation of the audit report on 2/4/2 (sic).
5. Copy of the current foods services contract with Marriott.
6. Itemized list of how all of the \$450k Technology Integration in Education money was spent plus the additional \$65k out of M&O referenced in the auditor's report.

7. Total cost of Freeman, Shapard & Story audit and any additional charges from June 1, 2001.

You state that you have made available to the requestor all documents in categories five and six. You also inform this office that the district does not possess information responsive to categories 2, 3, 4 and 7.¹ As for the remaining information, you have requested a decision from this office pursuant to section 552.305 of the Government Code, which allows governmental bodies to rely on third parties having a privacy or property interest in the information to submit their own arguments as to why the requested information is excepted from public disclosure.

Section 552.305 allows an interested party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this decision, this office has received no correspondence from Faulkner Construction Company. Thus, Faulkner Construction Company has not demonstrated that its responsive information must be withheld from public disclosure. *See Gov't Code § 552.110(a), (b)*; Open Records Decision Nos. 552 at 5 (1990) (attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if governmental body takes no position, third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Consequently, the district must release to the requestor the responsive information of Faulkner Construction Company.

BLGY responded to the district's section 552.305 notice by claiming that portions of the requested information are excepted from disclosure pursuant to section 552.110. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) 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. The governmental body, or interested third party, raising the second prong of section 552.110 must provide a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from disclosure. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

¹ The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

BLGY's comments appear to invoke the second component of section 552.110. We have carefully considered BLGY's comments and have thoroughly examined the information that BLGY claims should be withheld from disclosure. We conclude that BLGY has established that the release of the information which we have marked would cause substantial competitive injury to BLGY. Therefore, the district must withhold the information we have marked under section 552.110(b).

The submitted information contains an e-mail address which is subject to section 552.137. Section 552.137 makes certain e-mail addresses confidential and provides in pertinent part:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You do not inform us that the member of the public has affirmatively consented to the release of the e-mail address. Therefore, you must withhold the e-mail address under section 552.137.

In summary, the district must withhold the information which we have marked under section 552.110. The district must withhold the e-mail address, which we have marked, under section 552.137 unless the member of the public has affirmatively consented to the release of the e-mail address. The remainder of the requested information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

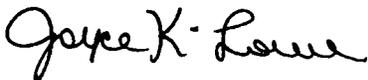
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 162176

Enc: Submitted documents

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