



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

Mr. George E. Grimes, Jr.
Walsh, Anderson, Brown, Gallegos and Green, P.C.
For Southside Independent School District
P.O. Box 460606
San Antonio, Texas 78246

OR2010-15909

Dear Mr. Grimes:

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# 397462.

The Southside Independent School District (the "district"), which you represent, received a request for (1) the projected 2010-2011 budget sections (Exhibits C) of each bid proposal submitted in response to the district's recent request for proposals ("RFP") regarding food service management services; (2) the scoring matrix for the RFP; (3) "any other information pertaining to guarantees as well as contributions made to the [d]istrict (i.e. scholarships, etc.);" and (4) the finalized contract between the district and Aramark Education ("Aramark"). You state the district has provided to the requestor the requested budget documents from one of the proposals received by the district, the scoring matrix, and the contract. Although you state the district takes no position with respect to the public availability of the submitted bid proposals, you state their release may implicate the proprietary interests of Aramark and Chartwells School Dining Services ("Chartwells"). Accordingly, you state, and provide documentation showing, the district notified these companies of the request and of each company's right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code § 552.305(d); see also 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 the applicability of exception to disclose under Act in certain circumstances). We have received comments from Chartwells. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have submitted Aramark's and Chartwells's full bid proposals. However, except for the information already provided, the requestor seeks only the proposed budget sections (Exhibits C) and any other information regarding guarantees and contributions. Thus, the remaining information in Aramark's and Chartwells's proposals is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the district received the request for information on July 14, 2010. You did not, however, request a ruling from this office or submit a copy of the information requested until August 13, 2010. Thus, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because third party interests can provide a compelling reason to withhold information, we will consider whether or not any of the submitted responsive information is excepted from disclosure under the Act.

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 Aramark explaining why its submitted responsive information should not be released. Therefore, we have no basis to conclude Aramark has protected proprietary interests in its submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the district may not withhold Aramark's responsive information on the basis of any proprietary interests Aramark may have in the information.

Chartwells indicates its submitted responsive information is confidential because it specifically labeled the information as confidential prior to submitting the information to the district. Information is not confidential under the Act, however, simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 of the Government Code). Consequently, unless Chartwells's information at issue comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Chartwells claims its budget and other financial information is excepted under section 552.110(b) of the Government Code, which protects “[c]ommercial 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 [.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; ORD 661 at 5-6.

Chartwells claims its proposed budget and financial guarantee information constitutes commercial information that, if released, would cause it substantial competitive harm. After reviewing the submitted arguments and the information at issue, we find Chartwells has established release of its information pertaining to its fees charged, guarantees made, and estimated costs incurred would cause the company substantial competitive injury. Therefore, the district must withhold this information, which we have marked, under

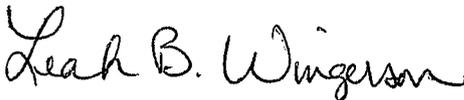
section 552.110(b). We find, however, Chartwells has not demonstrated release of its remaining proposed budget information would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because bid specifications and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, the district may not withhold any of Chartwells's remaining information at issue under section 552.110(b) of the Government Code.

In summary, the district must withhold the marked financial information under section 552.110(b) of the Government Code. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 397462

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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