



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2011

Ms. Elaina Polsen
Director of Public Information
Clear Creek Independent School District
2425 East Main Street
League City, Texas 77573

OR2011-09711

Dear Ms. Polsen:

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# 423763 (CCISD TPIAR # 1010-1455).

The Clear Creek Independent School District (the "district") received a request for information related to third party Xerox's response to the district's Request for Proposal for the contract related to Print Management Solutions.¹ Although the district takes no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Xerox. Accordingly, you inform us you have notified Xerox of the request and of its right to submit arguments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 applicability of exception in certain circumstances). We have considered the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 prescribes procedures a governmental body must follow in asking this office to decide whether

¹As you have not submitted a copy of the written request for information, we take our description from your brief.

requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Section 552.301(e) requires a governmental body to provide a copy of the written request for information and a signed statement or sufficient evidence of the date the governmental body received the request to this office no later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e)(1)(B), (C). However, as of the date of this letter, you have not submitted to this office a copy of the written request for information nor have you submitted a signed statement or sufficient evidence of the date the governmental body received the request. 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 information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (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 any of the submitted information is excepted under the Act.

Next, 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Xerox has not submitted any comments to this office explaining how release of the submitted information would affect its proprietary interests. Accordingly, none of the information at issue may be withheld on the basis of the proprietary interests of Xerox. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret). As no exceptions to its disclosure are raised, the district must release the submitted 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 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 423763

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Mike Nays
Xerox
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(w/o enclosures)