



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2012

Ms. Christine Badillo
Counsel for the Leander Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768-2156

OR2012-17883

Dear Ms. Badillo:

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# 470454.

The Leander Independent School District (the "the district"), which you represent, received a request for the top three proposals submitted in response to a request for proposal for prescription benefit management, the resulting contract, and evaluation materials.¹ Although you state the district takes no position on the public availability of the submitted information, you indicate its release may implicate the proprietary interests of PTRX, Inc. ("PTRX") and US Script. Accordingly, you notified PTRX and US Script of the request and of their right to submit comments to this office explaining why the information at issue 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 applicability of exception to disclosure under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have not submitted the requested top third proposal for our review. To the extent this information exists and was maintained by the district on the date the district received the request, we assume it has been released. If the district has not released such information, it must do so at this time. *See* Gov't Code § 552.301(a), .302; *see also* Open

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code 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, neither PTRX nor US Script has submitted comments to this office explaining why any portion of the submitted information should not be released. Thus, we have no basis to conclude the release of the submitted information would implicate the proprietary interests of these companies, and none of the information may be withheld on that ground. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the submitted information consists of personal financial information. We are unable to determine whether this information pertains to actual living individuals or fictitious individuals created as samples for purposes of responding to the district's request for proposal by the company that submitted the information. Therefore, to the extent the information we have marked pertains to living individuals, the district must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked does not pertain to living individuals, the information is not private and the district may not withhold the marked information under section 552.101 of the Government Code on that basis.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note some of the information at issue appears to 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, to the extent the information we have marked pertains to living individuals, the district must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released, but any information subject to copyright may only be released 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 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/dls

Ref: ID# 470454

Enc. Submitted documents

c: Requestor
(w/o enclosures)

**Ms. Mackenzie Hiller
US Script
2425 West Shaw Avenue
Fresno, California 93711
(w/o enclosures)**

**Ms. Christina Cortez
Account Coordinator
PTRX, Inc.
4590 Lockhill Selma
San Antonio, Texas 78249
(w/o enclosures)**