

December 19, 2012

Mr. George R. Meurer  
Counsel for Laredo Community College  
Kazen, Meurer, and Perez L.L.P.  
211 Calle Del Norte, Suite 100  
Laredo, Texas 78041

OR2012-20475

Dear Mr. Meurer:

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# 474640.

The Laredo Community College (the “college”), which you represent, received a request for a specified contract and the names of two specified vendors. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code.<sup>1</sup> You also state the requested information may implicate the proprietary interests of Blackboard Connect, Inc. (“Blackboard”). Accordingly, you inform us, and provide documentation showing, you notified Blackboard of the request and of the company’s right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that 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 the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the obligations of the college under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in

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<sup>1</sup>Although you also raise section 552.101, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov’t Code §§ 552.301, .302.

asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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. *Id.* § 552.301(e). You state the college received the request for information on October 1, 2012. Because you do not inform this office the college was closed during any business days between October 1, 2012, and October 22, 2012, we find the college's ten- and fifteen-business-day deadlines were October 15, 2012, and October 22, 2012, respectively. However, the envelopes in which you submitted the request for a decision and the information required by section 552.301(e) bear meter marks of October 16, 2012, and October 23, 2012, respectively. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the college failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is 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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because the claims of a third party under section 552.110 of the Government Code can provide a compelling reason for non-disclosure, we will consider whether the college must withhold any of the submitted information under section 552.110 of the Government Code.

You raise section 552.110 of the Government Code for the submitted information. However, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. As such, a governmental body may not raise section 552.110 on behalf of a third party. Therefore, if we do not receive comments from a third party explaining why the information at issue should not be released, we will conclude section 552.110 is not applicable.

An interested third party is allowed 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 letter, we have not received arguments from Blackboard. Thus, Blackboard has failed to demonstrate it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)–(b); 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. Accordingly, the college may not withhold the submitted information on the basis of any proprietary interest Blackboard may have in the information. As no other exceptions to disclosure have been raised, the submitted information must be released in its entirety.

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](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,

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 474640

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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