



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2013

Mr. Mark A. Booker
Director of Purchasing
Garland Independent School District
P.O. Box 469026
Garland, Texas 75046-4923

OR2013-09166

Dear Mr. Booker:

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# 489156.

The Garland Independent School District (the "district") received a request for information pertaining to the district's RFP No. 335-13, Food Service Miscellaneous Products. You state you are releasing some of the requested information to the requestor. Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of third parties. You state you notified the affected third parties of the request and of their right to submit arguments to this office as to why their information should not be released.¹ 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 in certain circumstances). We have received comments from Tyson. We have considered the submitted arguments and reviewed the submitted information.

We note 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

¹Although you do not specify which third parties were notified, we note you have submitted information pertaining to Acosta Food Service, Cargill Meat Solutions Corporation, and Tyson Prepared Foods, Inc. ("Tyson").

this letter, we have only received comments from Tyson on why the company's submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests in 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 district may not withhold any portion of the submitted information on the basis of any proprietary interests the remaining third parties may have in it.

Tyson raises section 552.110(b) of the Government Code for its pricing information. This section excepts from disclosure "[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). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD No. 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review, we find Tyson has established the pricing information we have marked constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Therefore, the district must withhold this information under section 552.110(b) of the Government Code. However, Tyson has not demonstrated how any of its remaining information constitutes commercial or financial information, the disclosure of which would cause it substantial competitive harm. *See* Open Records Decision Nos. 661 at 5-6, 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, and qualifications are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Thus, the district may not withhold any of the remaining information under section 552.110(b).

We also note that some of the remaining information may 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. *See* Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.*; *see also* 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, the district must withhold the information we have marked under sections 552.110(b) of the Government Code. The district must release the remaining information, but any information protected by 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 489156

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Jenna R. Johnston
Senior Counsel II
Legal Department
Tyson Foods, Inc.
2200 Don Tyson Parkway
Springdale, Arizona 72762
(w/o enclosures)

Mr. Peter Brown
Vice President
Cargill Meat Solutions Corporation
151 North Main Street
Wichita, Kansas 67202
(w/o enclosures)

Ms. Sheryl Orn
Acosta Food Service
1328 South Loop West, Suite 102
Houston, Texas 77044
(w/o enclosures)