



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2016

Ms. Andrea Slater Gulley
General Counsel
Amarillo Independent School District
7200 I-40 West
Amarillo, Texas 79106

OR2016-11120

Dear Ms. Gulley:

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# 610266.

The Amarillo Independent School District (the "district") received a request for a list of all bidders pertaining to a specified request for bids, pricing pages for each bidder, and a copy of the executed contract. You state that you do not possess any information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code.² You state release of this information may implicate the proprietary interests of Apple Bus Company ("Apple") and Durham School Services ("Durham"). Accordingly, you state you notified Apple and Durham of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

You argue portions of the submitted proposals are excepted from disclosure under section 552.110 of the Government Code. We note, however, section 552.110 is designed

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2(1990), 452 at 3 (1986), 362 at 2 (1983).

²We note although you raise section 552.101 of the Government Code, you make no argument to support this exception. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

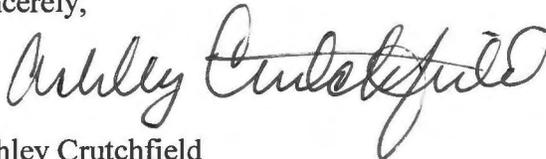
to protect the interests of third parties not the interests of a governmental body. *See* Gov't Code § 552.110 (excepting from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained”). Thus, we will not consider the district’s argument under section 552.110.

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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Apple or Durham explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests in the 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. Accordingly, the district may not withhold any portion of the submitted information related to those parties on the basis of any proprietary interest they may have in the information. As no other exceptions to disclosure have been raised for the submitted information, it 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.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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 610266

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)