



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2011

Mr. Humberto Aguilera  
Attorney for San Antonio Independent School District  
Escamilla, Poneck & Cruz, L.L.P.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2011-15045

Dear Mr. Aguilera:

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# 436001.

The San Antonio Independent School District (the “district”), which you represent, received a request for information regarding a specified proposal submitted to the district.<sup>1</sup> Although the district takes no position regarding whether the submitted information is excepted from disclosure, you state release of the requested information may implicate the proprietary interests of Advantage USAA, Inc. (“Advantage”). Accordingly, you provide documentation showing you have notified Advantage of the request and its right to submit arguments to this office. *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 reviewed the submitted information.

Initially, we must address the district’s procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must to submit to this office, among other items, a copy of the written request for

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<sup>1</sup>As you did not submit a copy of the request, we take our description from your brief.

information. *See* Gov't Code § 552.301(e). In this instance, you state the district received the request for information on August 29, 2011. Accordingly, the fifteen-business-day deadline was September 20, 2011. However, as of the date of this ruling, the district has not submitted to this office a copy of the written request for information. Consequently, we find the district 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 comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (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. Because a third-party interest is at stake in this instance, we will consider whether the submitted information must be withheld under the Act.

We next 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 this ruling, we have not received comments from Advantage. Thus, we have no basis to conclude Advantage 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 district may not withhold any of the information at issue on the basis of any proprietary interest Advantage may have in the information. As no exceptions to disclosure have been raised, the submitted information must be released to the requestor.

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,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/agn

Ref: ID # 436001

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Victor M. Escobedo  
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13350 Rebecca Creek Road  
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(w/o enclosures)