



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2013

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2013-00536

Dear Mr. LeBlanc:

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# 476264.

The Houston Independent School District (the "district") received a request for the proposal and contract related to the district's request for proposals for project number 10-03-01. Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of ARAMARK Education ("Aramark"). Thus, pursuant to section 552.305 of the Government Code, you notified Aramark of the request and of its right to submit arguments to this office as to why its information should not be released. *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 reviewed the submitted information.

We note that 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Aramark has submitted no comments to this office explaining how release of the information at issue would affect its proprietary interests. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would result from disclosure); Open Records Decision Nos. 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 Aramark's information on the basis of that company's proprietary interests.

We note a portion of the submitted information is subject to section 552.136 of the Government Code.¹ Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the district must withhold the information we have marked under section 552.136 of the Government Code.

Some of the remaining information may be excepted from public disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential.

Therefore, to the extent the information we have marked consists of the home address of a current or former employee or official of the district who timely requested confidentiality under section 552.024, the district must withhold the marked information under section 552.117(a)(1) of the Government Code. However, if the marked information is not the home address of a current or former employee or official of the district, or if the individual whose information is at issue did not make a timely election, then the district may not withhold the information under section 552.117(a)(1).

We note some of the submitted information 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

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

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 section 552.136 of the Government Code. To the extent the information we have marked consists of the home address of a current or former employee or official of the district who timely requested confidentiality under section 552.024, the district must withhold the marked information under section 552.117(a)(1) of the Government Code. The remaining information must be released; however, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 476264

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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