



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2014

Mr. Benjamin Castillo
Counsel for the Weslaco Independent School District
O'Hanlon, Rodriguez, Betancourt & Demerath
220 South Jackson Road
Edinburg, Texas 78539

OR2014-19137

Dear Mr. Castillo:

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# 542016.

The Weslaco Independent School District (the "district"), which you represent, received a request for information related to request for proposals number 14-07-35, including the final bid tabulations and all responses received by the district.¹ You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Montalvo Insurance Agency ("Montalvo"). Accordingly, you state, and provide documentation showing, you notified Montalvo of the request for information and of its right to submit arguments to this office as to why the submitted information 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

¹You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Montalvo. We have reviewed the submitted information and the submitted arguments.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See Gov't Code* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must 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. *See id.* § 552.301(e). The district received the request for information on August 11, 2014. We understand the district was closed on September 1, 2014. You do not inform us the district was closed for any additional business days between August 11, 2014, and September 2, 2014. You inform us on August 25, 2014, the district sent the requestor an "extension to produce information not otherwise excepted from production." However, we note such an extension does not serve to toll the deadlines under section 552.301 of the Government Code. Accordingly, you were required to provide the information required by section 552.301(b) by August 25, 2014. Moreover, you were required to provide the information required by section 552.301(e) by September 2, 2014. However, the envelopes in which the district provided the information required by sections 552.301(b) and 552.301(e) were postmarked August 29, 2014, and September 5, 2014, respectively. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *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. The district and Montalvo each claim section 552.104 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, section 552.104 does not constitute a compelling reason to withhold information. *See Gov't Code* § 552.007; Open

Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Accordingly, the district has waived its claim under section 552.104 of the Government Code and may not withhold the submitted information on that basis. However, sections 552.101 and 552.110 can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of these exceptions to the submitted information. Further, as third-party interests can provide a compelling reason to withhold information, we will consider Montalvo's argument against disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. You contend the requested bid proposals are excepted from disclosure under section 552.101 in conjunction with section 2156.123 of the Government Code, which provides:

(a) The commission or other state agency shall avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

(b) The commission or other state agency shall file each proposal in a register of proposals, which, after a contract is awarded, is open for public inspection unless the register contains information that is excepted from required disclosure under Subchapter C, Chapter 552.

Id. § 2156.123(a),(b). Subchapter C of chapter 2156 of the Government Code prescribes procedures for the use of competitive sealed bid proposals by state agencies. *See id.* § 2156.121. We note section 2156.123 does not contain express language that makes information confidential. This office has held the statutory confidentiality protected by section 552.101 requires express language making certain information confidential or stating information shall not be released to the public. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because section 2156.123 does not expressly make information confidential or expressly state the information shall not be released to the public, the district may not withhold any of the submitted information under section 552.101 in conjunction with section 2156.123 of the Government Code.

Montalvo raises section 552.104 of the Government Code for its information. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* ORD 592 at 8 (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation).

Therefore, we will not consider Montalvo's claim under this section. As noted above, the district has waived its claim under section 552.104. *See id.* Therefore, the district may not withhold any of the submitted information under section 552.104 of the Government Code.

Next, the district contends the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code* § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the district's arguments under section 552.110. As Montalvo does not argue section 552.110 of the Government Code is applicable to its information, no portion of the submitted information may be withheld on that basis. As no further exceptions to disclosure have been raised, the district must release the submitted information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 542016

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)