



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 5, 2016

Ms. Leah Wingerson  
Coordinator of Legal Services  
Lewisville Independent School District  
P.O. Box 217  
Lewisville, Texas 75067

OR2016-02830

Dear Ms. Wingerson:

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# 597172.

The Lewisville Independent School District (the "district") received a request for information pertaining to a specified contract. The district informs us it does not have some of the requested information.<sup>1</sup> The district states it will withhold information in accordance with section 552.136 of the Government Code.<sup>2</sup> The district also states it will make some of the requested information available to the requestor. The district does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the district states, and provides documentation showing, it notified Satterfield & Pontikes Construction, Inc. ("Satterfield") of the district's receipt of the request for information and of Satterfield's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (1990) (statutory predecessor to section 552.305 permits governmental body to

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

<sup>2</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.<sup>3</sup>

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 requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Satterfield has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of that third party, and the district may not withhold any portion of it on that basis. *See* 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 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bhf

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<sup>3</sup>You acknowledge the district did not comply with the requirements of section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the submitted information must be withheld under the Act on that ground.

Ref: ID# 597172

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Denis Ducran  
Vice President & General Counsel  
Satterfield & Pontikes Construction, Inc.  
11000 Equity Drive, Suite 100  
Houston, Texas 77041  
(w/o enclosures)