



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 9, 2018

~~Mr. W. Clayton Cain
Counsel for the Victoria Independent School District
Cullen, Carsner, Seerden & Cullen, L.L.P.
P.O. Box 2938
Victoria, Texas 77902-2938~~

OR2018-16242

Dear Mr. Cain:

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# 717601.

The Victoria Independent School District (the "district"), which you represent, received a request for information pertaining to the hiring process for the district's superintendent position. You state the district has released some information. You also state the district does not maintain information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.126 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of JG Consulting ("JGC"). Accordingly, you state the district notified JGC of the request for information and of its 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 your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. See Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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. Bastamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); 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).

Although you contend the submitted information is excepted under section 552.110 of the Government Code, we note section 552.110 is designed to protect the interests of third parties, not the interests of governmental bodies themselves. *See id.* § 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 do not address your argument under section 552.110. We further 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 requested information relating to it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from JGC explaining why the submitted information should not be released. Therefore, we have no basis to conclude JGC has a protected proprietary interest 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 the submitted information on the basis of any proprietary interest JGC may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You argue release of the submitted information would harm JGC by giving an advantage to its competitors. We note, however, such an interest in protecting the information belongs to JGC, and not the district. Therefore, the district may not withhold the submitted information under section 552.104(a).

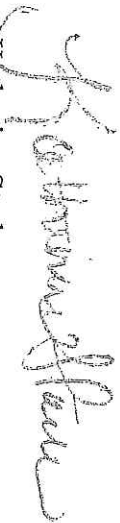
Section 552.126 of the Government Code excepts from disclosure the “name of an applicant for the position of superintendent of a public school district . . . except that the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days” before a vote or final action is taken. Gov’t Code § 552.126. Furthermore, this protection from disclosure extends not only to the name of the individual, but also to any information tending to identify the individual. *See* Open Records Decision No. 540 (1990) (interpreting section 552.123—which, in language similar to section 552.126, protects identities of applicants for chief executive officer of institution of higher education—as applying to identities, rather than just names of applicants). This office has previously held the type of information that identifies individuals in such cases includes, but is not limited to, resumes, professional qualifications, membership in professional organizations, dates of birth, current positions, publications, letters of recommendation, or any other information that can be uniquely associated with a particular applicant. *Id.* at 4.

You generally assert the submitted information is confidential under section 552.126 of the Government Code. Upon review, however, we find you have failed to demonstrate how the information at issue identifies or tends to identify any particular candidate for the position of superintendent. Accordingly, the district may not withhold any portion of the submitted information under section 552.126. 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,



Katherine Stark
Attorney
Open Records Division

KS/som

Ref: ID# 717601

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)