



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 29, 2016

Ms. Ylise Janssen
General Counsel
Austin Independent School District
1111 West Sixth Street, Suite A240
Austin, Texas 78703

OR2016-06967

Dear Ms. Janssen:

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# 603379.

The Austin Independent School District (the "district") received a request for the competing bids submitted for a specified request for proposals. Although the district takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of several third parties. Accordingly, you state, and provide documentation showing, you notified BrandEra; Cultural Strategies; Educational Marketing Group, Inc.; Inspire Group, Inc. ("Inspire"); Sanders/Wingo Advertising, Inc.; and TexHahn Media, Inc. d/b/a Hahn Public Communications of the request for information and of the companies' rights to submit arguments to this office as to why the submitted information should not be released.¹ *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

¹We note the district failed to comply with the procedural requirements of section 552.301(e) of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e). Nonetheless, 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 is excepted from disclosure under the Act, notwithstanding the district's violation of section 552.301 in requesting this decision.

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

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 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, we have received comments from only Inspire explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have protected proprietary interests 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 any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Inspire claims its submitted information is excepted under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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." *Id.* at 841. Inspire states it has competitors. In addition, Inspire states disclosure of the information at issue would provide Inspire's competitors with an advantage. After review of the information at issue and consideration of the arguments, we find Inspire has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Inspire's information under section 552.104(a) of the Government Code.² The district must release the remaining information.

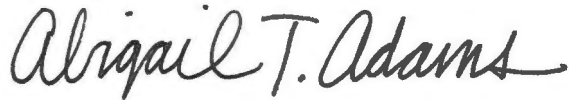
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

²As our ruling is dispositive, we need not address Inspire's remaining argument.

[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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 603379

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Ashley Yablon
Inspire
3625 North Hall Street, #1100
Dallas, Texas 75219
(w/o enclosures)

Sanders/Wingo Advertising, Inc.
Building C, Third Floor
2222 Rio Grande
Austin, Texas 78705
(w/o enclosures)

TexHahn Media dba Hahn Public Communications
4200 Marathon Boulevard, Suite 300
Austin, Texas 78756
(w/o enclosures)

Educational Marketing Group, Inc.
19751 East Mainstreet, Suite 247
Parker, Colorado 80138
(w/o enclosures)

Cultural Strategies
3601 South Congress, Suite A-200
Austin, Texas 78704
(w/o enclosures)

BrandEra
219 South Main Street, Suite 301
Fort Worth, Texas 76104
(w/o enclosures)