



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 8, 2016

Ms. Ramona Soto  
Office of Legal Services  
Fort Worth Independent School District  
100 North University Drive, Suite SW 172  
Fort Worth, Texas 76107

OR2016-07931

Dear Ms. Soto:

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# 605002.

The Fort Worth Independent School District (the "district") received three requests from different requestors for a specified settlement agreement. Although you take 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 Chesapeake Operating, L.L.C. ("Chesapeake"). Accordingly, you state, and provide documentation showing, you notified Chesapeake 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 third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Chesapeake. We have reviewed the submitted information and the submitted arguments. We have also received and considered comments from one of the requestors and attorneys representing the two remaining requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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. Upon review, we find Chesapeake has failed to demonstrate release of the information at issue would give advantage to a competitor or bidder. Accordingly, the district may not withhold any of the submitted information under section 552.104 of the Government Code.

Next, Chesapeake states some of its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also Open Records Decision No. 661 at 5 (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).

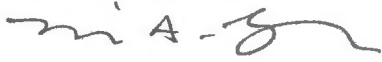
Upon review, we find Chesapeake has failed to demonstrate the release of any of its information would result in substantial harm to its competitive position. See Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. See Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, none of the submitted information may be withheld under section 552.110(b) of the Government Code. 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](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,

A handwritten signature in black ink, appearing to read "ni A - ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bw

Ref: ID# 605002

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)