



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 2, 2016

Ms. Cynthia L. Benavides
General Counsel for the Weslaco Independent School District
Jones, Galligan, Key & Lozano, L.L.P.
P. O. Drawer 1247
Weslaco, Texas 78599-1247

OR2016-17352

Dear Ms. Benavides:

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# 621041.

The Weslaco Independent School District (the "district"), which you represent, received a request for vendor submitted responses, bid tabulations, scoring sheets, and descriptions of awarded services for each vendor pertaining to a specified request for proposal. You state the district has released most of the responsive information. Although you state the district takes no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Foremost Telecommunications ("Foremost"). Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of its rights 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 received comments from Foremost. We have considered the submitted arguments and reviewed the submitted information.¹

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). A

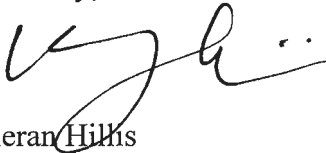
¹You acknowledge the district did not comply with section 552.301 of the Government Code when it requested a ruling from this office. *See* Gov't Code § 552.301(b), (c). Nevertheless, because third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the arguments submitted by the third party for the submitted information. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977).

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. Foremost states it has competitors. In addition, Foremost states release of the submitted information would give its competitors an advantage in future bids by allowing competitors to gain information related to Foremost’s service delivery methods, the architecture underlying the service, pricing information, and other matters affecting competitive advantages. Upon review of the submitted information and consideration of the arguments, we find Foremost has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.²

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,



Kieran Hills
Assistant Attorney General
Open Records Division

KH/eb

Ref: ID# 621041

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)

²As our ruling is dispositive, we do not address the remaining argument to withhold this information.