



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 5, 2016

Dr. Carol Simpson
Counsel to the Arlington Independent School District
Eichelbaum Wardell Hansen Powell & Mehl, P.C.
5801 Tennyson Parkway, Suite 360
Plano, Texas 75024

OR2016-26858

Dear Dr. Simpson:

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# 636433.

The Arlington Independent School District (the "district"), which you represent, received a request for line item pricing for seven categories of products. You state release of the submitted information may implicate the proprietary interests of Alpha Food Company; Cargill Kitchen Solutions; Fresh Innovations of California, L.L.C.; J&J Snack Foods Corp.; Jennie-O Turkey Store Sales, LLC; Lamb Weston; McCain Foods USA; Red Gold, LLC; Schwans; Tyson Prepared Foods; Wawona Frozen Foods; Land O Lakes; MCI Foods; Bosco's; Advanced Pierre Foods; Hiland Dairy Foods; Byrne Brothers Food, Inc.; CD Hartnett; Empire Paper; Genesis II, Inc.; Masters Distribution System; Pollock Paper Distributors; Supply Works; Armour Eckrich Meats LLC; Aрызta LLC; Buena Vista Foods; C.H. Guenther & Son, Inc.; Foster Poultry Farms ("Foster Poultry"); High Liner Foods; Lechi Foods; Norpac Foods; Peach Valley Bakery, LLC; Pinnacle Foods Group; Sysco NTX; Tampa Maid Foods; Braun Beef Company; Sadlers; Calico Industries, Inc.; Daxwell; Jake's Finer Foods; Last Group Enterprises, Inc.; Wallace Packaging, LLC; Atlantic Beverage Company; Barilla American; Bolner's Fiesta Products, Inc.; Churchfield Trading Company; H Schrier & Co, Inc.; Hank's Brokerage; H.J. Heinz Company; JNS Foods; Kent Precision Foods Group, Inc.; Kikkoman Sales; ParWay Tryson Company; Michael Foods, Inc. ("Michael Foods"); and Conagra Foods, Inc. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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).

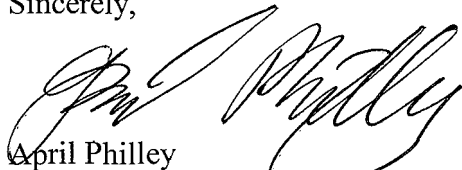
We have received comments from Foster Poultry and Michael Foods. You claim the submitted information is excepted from disclosure under sections 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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). 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 represent the information pertains to a competitive bidding situation. In addition, you state the district annually requests bids on the commodities at issue. You further state this information is not ordinarily available and would give the requestor an unfair advantage over other potential bidders for district commodity contracts. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a).

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,



April Philley
Assistant Attorney General
Open Records Division

AP/akg

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ref: ID# 636433

Enc. Submitted documents

c: Requestor
(w/o enclosures)

57 Third Parties
(w/o enclosures)