



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2017

Ms. Kristi Godden
Counsel for the Hidalgo Independent School District
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701

OR2017-00366

Dear Ms. Godden:

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# 640962 (Reference No. HISD-023).

The Hidalgo Independent School District (the "district"), which you represent, received a request for copies of the complete tabulations for thirteen specified bids. 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 All American Poly, Aluminum Athletic Equipment, Inc, American Soccer Company, American Team Sports, Barcelona Sporting Goods, Bill Guthrie Sports, Inc., Bombids Promounds, Bombids Robbins Sports, BSN Sport Collegiate Pacific ("BSN"), Buffalo Business, CC Distributors, Central Poly, Cielo Office Products, Eagle Brush, Fromuth, Gulf Coast Paper, Interboro Packaging, Matera Paper Co., McAllen Sports, Riddell, Rio Paper, Soccer Post, Sport Supply Group, Inc., Sports Endeavors, Inc., Titan Support Systems, Unipak Corp., and Yanitor. Accordingly, you state, and provide documentation showing, you notified these 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 BSN. 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of these companies has a protected proprietary interest in the information at issue. *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 information at issue on the basis of any proprietary interest these third parties may have in the submitted information.

Section 552.104(a) of the Government Code exempts 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. BSN states it has competitors. In addition, BSN states the information at issue contains information related to its pricing structure for competitive bids, the release of which would place BSN at a severe competitive disadvantage. After review of the information at issue and consideration of the arguments, we find BSN has established the release of its information would give advantage to a competitor or bidder. Thus, we conclude the district may withhold BSN's information under section 552.104(a) of the Government Code.¹ As no exceptions to disclosure of the remaining information have been raised, 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/>

¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

[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 Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 640962

Enc. Submitted documents

c: Requestor
(w/o enclosures)

11 Third Parties
(w/o enclosures)