



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 27, 2017

Mr. Mike Leasor
Counsel for the Azle Independent School District
Leasor & Crass
302 West Broad Street
Mansfield, Texas 76063

OR2017-04222

Dear Mr. Leasor:

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# 647435.

The Azle Independent School District (the "district"), which you represent, received a request for a specified contract. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Sodexo Services of Texas, L.P. ("Sodexo"). Accordingly, you state, and provide documentation showing, you notified Sodexo 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 reviewed the submitted information and the submitted arguments.

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). The district states Sodexo and the requestor are competitors. However, we find the district has failed to demonstrate the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the district may not withhold the submitted information under section 552.104(a) of the Government Code.

The district also contends the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov’t Code* § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the district’s arguments under section 552.110 of the Government Code.

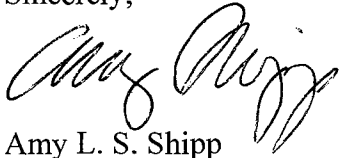
Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov’t Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Sodexo explaining why the submitted information should not be released. Therefore, we have no basis to conclude Sodexo has a protected proprietary interest 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 the submitted information on the basis of any proprietary interest Sodexo may have in the information. Therefore, 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, 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 "Amy Shipp". The signature is fluid and cursive, written over the printed name.

Amy L. S. Shipp
Assistant Attorney General
Open Records Division

ALS/eb

Ref: ID# 647435

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)