



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2017

Ms. Claudia Chahin
Senior Legal Counsel
East Austin College Prep
6002 Jain Lane
Austin, Texas 78721

OR2017-04800

Dear Ms. Chahin:

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# 648021.

East Austin College Prep ("EAPrep") received a request for six categories of information pertaining to all purchasing records during a specified period of time.¹ You state you have released some information. 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 several third parties. Accordingly, you state, and provide documentation showing, you notified the affected third parties of the request of information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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 A&A

¹You state EAPrep sought clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Telecom Group, Inc. (“A&A”); the City of Austin (the “city”); Education Service Center, Region 2 (“ESC”); Forde-Ferrier, LLC (“Forde-Ferrier”); Southwest Key Programs (“Southwest”); Star Shuttle Inc. (“Star”); Workers Assistance Program, Inc. (“WAP”); and a notified individual.² We have considered the submitted arguments and reviewed the submitted information.

We note the city seeks to withhold information not submitted to this office by EAPrep. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by EAPrep, this ruling does not address this information and is limited to the information submitted as responsive by the EAPrep.

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) of the Government Code 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 any other affected third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests 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, EAPrep may not withhold any portion of the submitted information related to the remaining affected third parties on the basis of any proprietary interest they may have in the 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. A&A, ESC, Forde-Ferrier, Southwest, Star, WAP, and the notified individual state they have competitors. In addition, A&A, ESC, Forde-Ferrier, Southwest, Star, WAP, and the notified individual state release of their information would provide an unfair advantage to their competitors in bidding situations. For many years, this office

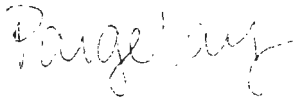
²We have received comments from Wansley Refrigeration and Gulf Coast Paper Company stating they do not object to the release of their information. We have also received correspondence from School Counselor Central, LLC and Don Johnston Incorporated, but neither party has provided any arguments against disclosure of their information.

concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to the *Boeing* decision, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find A&A, ESC, Forde-Ferrier, Southwest, Star, WAP, and the notified individual have each established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude EAPrep may withhold information we have indicated under section 552.104(a) of the Government Code.³ The remaining information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

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³As our ruling is dispositive, we need not address any remaining arguments against disclosure.

Ref: ID# 648021

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)