



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Ms. Kristi Godden
Counsel for Edinburg Consolidated Independent School District
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701-2208

OR2017-04847A

Dear Ms. Godden:

This office issued Open Records Letter No. 2017-04847 (2017) on March 7, 2017. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2017-04847 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 659532 (ECISD-16-226 and ECISD-16-233).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received two requests for specified bid information. Although you take 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 BSN Sports ("BSN"); Daktronics; LSI Industries ("LSI"); and Varsity Score Boards ("Varsity").¹ Accordingly, you state, and provide documentation showing, you notified the affected third parties of the request for 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 § 552.305(d); *see also* Open Records

¹We note the district did not comply with section 552.301(b) of the Government Code in requesting this decision. *See id.* § 552.301(b). Nevertheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

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 considered the submitted arguments and reviewed the submitted information.

Initially, 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* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Daktronics, LSI or Varsity explaining why their information should not be released. Therefore, we have no basis to conclude these third parties have 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 interests Daktronics, LSI or Varsity may have in the information.

BSN asserts its information is protected under section 552.104 of the Government Code. 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 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, if released, would give its competitors an advantage. BSN also argues the release of the information would cause substantial harm. After review of the information at issue and consideration of the arguments, we find BSN 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 information we marked under section 552.104(a).²

In summary, the district may withhold the information we marked under section 552.104(a) of the Government Code. 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.

²As our ruling is dispositive, we need not address BSN's remaining arguments against disclosure of its information.

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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 659532

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)