



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 29, 2017

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

OR2017-06509

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# 651324 (ORR# ECISD-16-252).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for information related to request for qualifications number 16-175. 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 Alvarado Architects & Associates, Inc; Amtech Solutions, Inc; Dannenbaum Engineering Company - McAllen, L.L.C. ("Dannenbaum"); EGV Architects, Inc.; ERO Architects; Garza Bomberger & Associates; Gignac Architects; Gomez Mendez Saenz, Inc.; Mata + Garcia Architects, L.L.P.; Milnet Architectural Services; Negrete & Kolar Architects, L.L.P.; and PBK. 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 Dannenbaum. We have reviewed the submitted information and the submitted arguments.

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 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 the submitted information should not be

released. Therefore, we have no basis to conclude any of the remaining 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 interest the remaining third parties 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. Dannenbaum states it has competitors. In addition, Dannenbaum states release of its information would compromise its ability to compete for similar projects and would hinder future efforts to secure other projects. After review of the information at issue and consideration of the arguments, we find Dannenbaum has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Dannenbaum’s information under section 552.104(a) of the Government Code. As no exceptions to disclosure have been raised for the remaining information, the district must release it.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 651324

Enc. Submitted documents

c: Requestor
(w/o enclosures)

12 Third Parties
(w/o enclosures)