



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2017

Ms. Tammy McDonald
Public Information Officer
Del Mar College District
101 Baldwin Boulevard
Corpus Christi, Texas 78404-3897

OR2017-16606

Dear Ms. McDonald:

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# 666441.

The Del Mar College District (the "district") received a request for eighteen categories of information concerning the bidding process for a specified project. You state you have released some information to the requestor. Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of Bartlett Cocke/Beecroft, a joint venture, ("Bartlett") and SpawGlass Contractors, Inc. ("SpawGlass"). Accordingly, you state you notified the named 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 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 SpawGlass. We have reviewed the submitted information and the submitted arguments. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 Bartlett explaining why the information at issue should not be released. Therefore, we have no basis to conclude Bartlett 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 Bartlett may have in the information.

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. SpawGlass states it has competitors. In addition, SpawGlass states release its information would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find SpawGlass has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold SpawGlass’s information under section 552.104(a) of the Government Code.¹ 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/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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/tdw

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

Ref: ID# 666441

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)