



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2017

Ms. Nancy M. Molina
Assistant General Counsel
Lone Star College
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2017-17514

Dear Ms. Molina:

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# 669617 (LSC File No. LMC0002961).

Lone Star College (the "college") received a request for information pertaining to the pricing, proposals, and bidders for a specified request for proposals.¹ You state the college has released some information. You claim portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. You also state you notified Alliance Graphics and Printing; Hamor Printing; HISD Printing Services; Marfield Corporate Stationary; Page/International Communications; Seebridge Media; Southwest Precision Printers; Tejas Office Products, Inc.; TLS Graphics, Inc.; and Wright's Printing and Marketing of the request for information and of their rights 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

¹The college sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the third parties. Thus, we have no basis to conclude any of the third parties have a protected proprietary interest in the submitted information. See *id.* § 552.110(a)-(b); 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 college may not withhold any of the submitted information on the basis of any proprietary interest the third parties may have in the information.

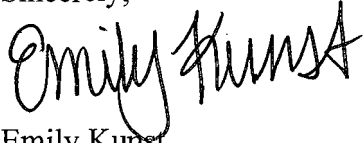
Section 552.104(a) of the Government Code exempts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the information at issue pertains to a competitive bidding situation. You state the college currently has a request for proposals pending that covers the identical services provided for in the request for proposals specified in the request for information. Furthermore, you state releasing the information at issue will harm the college's negotiating position with any selected vendor. After review of the information at issue and consideration of the arguments, we find the college has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude college may withhold the information you marked in Exhibit 3 and the entirety of Exhibit 4 under section 552.104(a). The college must release the remaining information.

The college also asks this office to issue a previous determination that would permit it to withhold pricing information of non-winning bidders under section 552.104 of the Government Code without requesting a ruling from this office. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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 that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Attorney
Open Records Division

EK/eb

Ref: ID# 669617

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)