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ATTORNEY GENERAL OF TEXAS

August 7, 2017

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

OR2017-17664

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# 669515 (ID# ECISD-E000120).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received four requests from four different requestors for information regarding a specified bidding situation. 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 specified third parties. Accordingly, you state, and provide documentation showing, you notified All American Security LLC; Protection One Alarm Monitoring; Safeguard Security; Strong Tower Technologies; Superior Alarms ("Superior"); and Turnkey Communications 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 Superior. We have reviewed the submitted information and the submitted arguments.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Superior explaining why the submitted information should not be released. Therefore, we have no basis to conclude 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 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. Superior states it has competitors. In addition, Superior states release of its information would give its competitors an advantage in future bidding situations. After review of the information at issue and consideration of the arguments, we find Superior has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Superior’s information, which we have marked, 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 Superior’s remaining argument against disclosure of the submitted information.

Ref: ID# 669515

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

6 Third Parties
(w/o enclosures)