



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2018

Mr. Ronn P. Garcia
Counsel for Region 17 Education Service Center
Underwood Attorneys at Law
P.O. Box 16197
Lubbock, Texas 79490

OR2017-23768A

Dear Mr. Garcia:

Our office issued Open Records Letter No. 2017-23768 (2017) on October 17, 2017. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on October 30, 2017. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")). Your request was assigned ID# 690527.

The Region 17 Education Service Center (the "center"), which you represent, received a request for specified bidding information for a specified time period. 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 several third parties.¹ Accordingly, you state, and provide documentation showing, you notified these third parties

¹AdvancePierre Foods; Alpha Food Company; Asian Food Solutions, Inc.; Basic American Foods; Bongard Creameries; Cargill Kitchen Solutions; Cargill Meat Solutions; Chef's Corner Foods; Con Agra Foods; Goodman Foods Products d/b/a Don Lee Farms; Foster Farms; Fresh Innovations; Giorgio Foods, Inc.; High Liner Foods (USA), Inc.; Horizon Snack Foods; Idahoan Foods, LLC; Integrated Food Service; J&J Snack Foods; Jennie-O Turkey Store; JM Smucker Company; J.R. Simplot; JTM Food Group; Labatt Food Service; Lamb Weston ("Lamb"); Land O'Lakes, Inc.; Lux Bakery; McCain Foods USA; MCI Foods Inc./Los Cabos Mexican Foods; Michael Foods, Inc. ("Michael"); Nardone Brothers Baking, Co.; National Food Group; Out of the Shell d/b/a Yang's 5th; Peterson Farms Fresh, Inc.; Pilgrim's Pride, Corp.; Red Gold, LLC; Rich Chicks, LLC; Tasty Brands; Trident Seafoods Corp.; Tyson Foods; Uno Foods, Inc.; and Wawona Frozen Foods.

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 arguments from Lamb and Michael. We have considered the submitted arguments and reviewed the submitted information.

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) of the Government Code 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 not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests 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 center may not withhold any portion of the submitted information related to the remaining third parties on the basis of any proprietary interest they may have in the information.

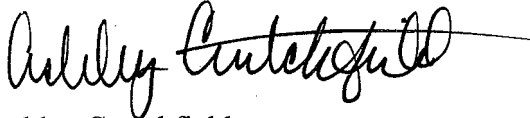
Michael asserts its pricing information is protected under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing 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. Michael states it has competitors, which includes the requestor. In addition, Michael states the information at issue, if released, would give the requestor an advantage in submitting a competitive bid to the same request for proposals. After review of the information at issue and consideration of the arguments, we find Michael has established the release of its pricing information would give advantage to a competitor or bidder. Thus, we conclude the center may withhold Michael's pricing information under section 552.104(a) of the Government Code.² As you raise no exceptions to disclosure, the center 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 Michael's remaining argument against disclosure.

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, appearing to read "Ashley Crutchfield", with a horizontal line extending to the right across the end of the signature.

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

Ref: ID# 690527

Enc. Submitted documents

c: Requestor
(w/o enclosures)

43 Third Parties
(w/o enclosures)