



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2018

Mr. Frances R. Broussard
General Counsel
Spring Branch Independent School District
955 Campbell Road
Houston, Texas 77024

OR2018-03009

Dear Mr. Broussard:

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# 695174.

The Spring Branch Independent School District (the "district") received a request for information pertaining to a specified bidding situation. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, you state release of the submitted information may implicate the proprietary interests of third parties.¹ Accordingly, you state, and provide documentation showing, you notified the third parties 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

¹The district notified the following third parties: Dr. Rochelle L. Webb d/b/a 3W Consulting Group, LLC; Jason J. Griffith; Kognito Solutions, LLC; Laurie Westphal; Learn IT Systems, LLC; Mackin Book Co., d/b/a Mackin Educational Resources; Magnify Learning; Margaret Hale; Mark Spilman; N2 Learning, LC; New Teacher Center; Odysseyware; Peter Gorman Leadership Associates; Research Triangle Institute; Teach the Future; Teach Transform, Inc.; Teachstone Training, LLC; The Reading and Writing Project Network, LLC; The School Turnaround Group; ThinkCERCA.com, Inc.; Troxel Communications, Inc.; and US Games, a Division of BSN Sports, LLC ("US Games").

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 on behalf of US Games. We have considered the submitted arguments and reviewed the submitted 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). 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 pertains to a competitive bidding situation. In addition, you state the district solicits proposals for the services at issue on a recurring basis and release of the submitted information will undercut the district’s negotiating position with respect to future solicitations and undermine the quality of future proposals. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a).²

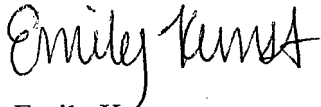
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we need not address US Game’s arguments against disclosure.

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
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 695174

Enc. Submitted documents

c: Requestor
(w/o enclosures)

23 Third Parties
(w/o enclosures)