



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2018

Ms. Claudia Chahin
Senior Legal Counsel
East Austin College Prep
6002 Jain Lane
Austin, Texas 78721

OR2018-04129

Dear Ms. Chahin:

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# 696584.

East Austin College Prep (the "EAPrep") received a request for purchasing records for a specified period of time. You state you have released some information. 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 third parties. Accordingly, you state, and provide documentation showing, you notified the 172 parties at issue 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 ACT, Inc. ("ACT"); Frontline Technologies Group, LLC ("Frontline"); Gulf Coast Paper Company ("Gulf Coast"); Rice University ("Rice"); Texas Department of Public Safety (the "department"); Tri-Point Refrigeration, Inc. ("Tri-Point"); and Varsity Brands Holding Company, Inc. ("Varsity"). We have considered the submitted arguments and reviewed the submitted information.

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* Gov't Code § 552.305(d)(2)(B). We note, the department states it does not object to

release of its information. We also note, Rice and Tri-Point do not assert any arguments to this office as to why its information should not be released. Furthermore, as of the date of this letter, we have not received comments from any of the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of 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, EAPrep may not withhold any of the information at issue on the basis of any proprietary interest the department, Rice, Tri-Point, or any of the remaining third parties may have in it.

Next, we note Frontline, Gulf Coast, and Varsity assert exceptions to disclosure of information EAPrep has not submitted for our review. This ruling does not address information beyond what EAPrep has submitted to us for review. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information EAPrep submitted as responsive to the request for information.¹ *See id.*

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party’s property interest, 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. ACT, Gulf Coast, and Varsity state they have competitors. In addition, ACT, Gulf Coast, and Varsity state release of their information at issue would provide an unfair advantage to its competitors. We note the information ACT, Gulf Coast, and Varsity seek to withhold consists of pricing of contracts with EAPrep. 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

¹As we are able to make this determination, we need not address Frontlines’ remaining arguments against disclosure of the submitted information.

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 839. After review of the information at issue and consideration of the arguments, we find ACT, Gulf Coast, and Varsity have established the release of the information at issue, which we marked, would give advantage to a competitor or bidder. Thus, we conclude EAPrep may withhold the information we marked under section 552.104(a).² 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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 696584

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 7 Third Parties
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.