



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 11, 2019

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

OR2019-00913

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# 745536.

The Spring Branch Independent School District (the "district") received a request for information related to request for proposals number 1072016, including responses, evaluation information, and the final contract. Although the district takes no position as to whether the submitted information is excepted under the Act, the district indicates release of the submitted information may implicate the proprietary interests of SouthwestData Solutions, L.L.C. ("SWData"), and Spindlemedia, Inc. ("Spindlemedia"). Accordingly, we understand the district notified SWData and Spindlemedia of the request for information and of the 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 Spindlemedia. We have reviewed the submitted arguments and 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). As of the date of this letter, we have not received comments from SWData explaining why the submitted information should not be released. Therefore, we have no basis to conclude SWData has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999)

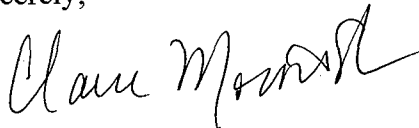
(to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest SWData 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. Spindlemedia states it has competitors. In addition, Spindlemedia states release of its information would do permanent harm to its competitive efforts and thwart its ability to remain competitive when facing future competitive bidding situations. After review of the information at issue and consideration of the arguments, we find Spindlemedia has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Spindlemedia’s information under section 552.104(a) of the Government Code.<sup>1</sup> 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/eb

---

<sup>1</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

Ref: ID# 745536

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third parties  
(w/o enclosures)