



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2019

Mr. Allen M. Keller
Counsel for Life School
Schulman, Lopez, Hoffer & Adelstein, LLP
845 Proton Road
San Antonio, Texas 78258

OR2019-08730

Dear Mr. Keller:

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# 762496.

Life School (the "school"), which you represent, received a request for fixed meal prices charged by the current provider for the 2018-2019 school year. You claim portions of the submitted information are excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the interests of a third party. Accordingly, you state, and provide documentation demonstrating, the school notified Sodexo Services of Texas, LLP ("Sodexo") of the request for information and of its right to submit arguments stating why its information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Sodexo. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the request for information is for only fixed meal prices. Accordingly, to the extent the information you submitted contains other items of information, that information is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the school need not release such information in response to this request.

Next, Sodexo seeks to withhold information the school did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not

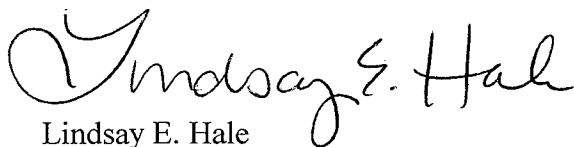
address that information and is limited to the information submitted as responsive by the school. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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). 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, 841 (Tex. 2015). We note a private third party may invoke this exception. *Id.* You represent the information pertains to a competitive bidding situation. You state the school has a perpetual need to secure contracts for vended meal services and the school solicits proposals for vended meal services on a recurring basis. In addition, you state release of the pricing information would allow other vendors to undercut future bids. Additionally, Sodexo states it has competitors and asserts release of the information at issue would adversely impact the company’s negotiating position for other business opportunities. After review of the information at issue and consideration of the arguments, we find the school and Sodexo have established the release of the responsive fixed meal prices would give an advantage to a competitor or bidder. Thus, we conclude the school may withhold the responsive information under section 552.104(a).¹

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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¹As our ruling is dispositive, we need not address Sodexo’s remaining arguments against disclosure of this information.

Ref: ID# 762496

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)