



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2019

Ms. Ingrid Gunter
Paralegal
Lewisville Independent School District
P.O. Box 217
Lewisville, Texas 75067

OR2019-08902

Dear Ms. Gunter:

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# 757776 (ORR 1819-119).

The Lewisville Independent School District (the "district") received a request for the bid tabulation for request for proposals F1012-18. Although the city takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Advantage Supply; Beyond Technology, Inc.; Carlisle's Engraving, Inc; Cascade School Supplies; Coast to Coast Computer Products, Inc.; Daze; Printer Products DBA Ink Direct USA; Dream Ranch Office Supplies; ECO Toner Austin; Empire Paper; FASTENation, Inc.; iOffice; JB Office; LD Products, Inc.; Matthews Office Supply; Office Depot, Inc. ("Office Depot"); Precision Business Machines, Inc.; Regency Office & Promotional Products; School Outfitters LLC; School Specialty, Inc.; SuppliesOutlet.com; Tech Dogs LLC; The Library Store, Inc.; The Tree House, Inc.; and World Wide Imaging Supplies. Accordingly, you state, and provide documentation showing, you notified these third parties 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 Office Depot. 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). As of the date of this letter, we have not received comments from any of the remaining interested third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the remaining interested 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, the district may not withhold any of the information at issue on the basis of any proprietary interest the remaining interested third parties may have in it.

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. Office Depot states it has competitors. Office Depot states release of its pricing information "would be detrimental to Office Depot, as it would enable Office Depot's competitors to unjustly undercut Office Depot on future bids." After review of the information at issue and consideration of the arguments, we find Office Depot has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Office Depot's information under section 552.104(a) of the Government Code.¹ 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/>

¹As our ruling is dispositive, we need not address the remaining arguments by Office Depot.

[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,


Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 757776

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 24 Third Parties
(w/o enclosures)