



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Mr. Douglas R. Brock
Counsel for the Troy Independent School District
Walsh Gallegos Treviño Russo & Kyle, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2019-10032

Dear Mr. Brock:

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# 759551.

The Troy Independent School District (the "district"), which you represent, received a request for information pertaining to specified individuals, verification of particular reports, and a contract between the district and Southeast Service Corporation d/b/a SSC Service Solutions ("SSC"). You state the district has released some information. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of SSC.¹ Accordingly, you state, and provide documentation showing, you notified SSC of the request and its right to submit arguments to this office. *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 SSC. We have considered the submitted arguments and reviewed the submitted information.

¹We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness. *See id.* §§ 552.007, .302, .352. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the district's violation of section 552.301 in requesting this decision.

Initially, we note SSC argues against the release of information that was not submitted by the district. This ruling does not address information that was not submitted by the district and is limited to the information the district has submitted for our review. *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 exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). We note 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. SSC states it has competitors. In addition, SSC states the release of the information it has indicated would give its competitors an advantage. SSC seeks to withhold the terms of the contract. 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, 842. After review of the information at issue and consideration of the arguments, we find SSC 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 information we have marked under section 552.104(a) of the Government Code.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/>

²As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

[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,

A handwritten signature in black ink that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 759551

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)