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ATTORNEY GENERAL OF TEXAS

April 16, 2019

Mr. Guillermo R. Garcia
Kazen, Meurer & Perez, L. L. P.
211 Calle Del Norte, Suite 100
Laredo, Texas 78041

OR2019-10233

Dear Mr. Garcia:

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# 761399.

The Laredo Independent School District (the "district"), which you represent, received a request for all responses and the signed contract related to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also inform us release of the submitted information may implicate the proprietary interest of GDS Governmental Data Services, Inc.; Hamer Enterprises; and Spindlemedia, Inc. ("Spindlemedia"). Accordingly, you state, and provide documentation showing, the district notified these third parties of the request and the 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 Spindlemedia. We have considered the submitted arguments and reviewed the submitted information.

You have not submitted the signed contract. Therefore, to the extent information responsive to this aspect of the request exists, we assume you have released it to the requestor. *See*

Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, the district must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from either of the remaining third parties. Thus, we have no basis to conclude either of the remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 submitted information on the basis of any proprietary interest either of the remaining third parties 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). 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). You represent the submitted information pertains to a competitive bidding situation. In addition, you state release of submitted information would provide future bidders an advantage and limit the district's ability to get a substantially better price on similar services. After review of the submitted information and consideration of the arguments, we find the district has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted 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

¹As our ruling is dispositive, we need not address Spindlemedia's arguments.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/jxd

Ref: ID# 761399

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)