



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2019

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

OR2019-10476

Dear Ms. 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# 761048.

The Spring Branch Independent School District (the "district") received a request for two categories of information pertaining to "charter bus trip requests" and the district's policy on the awarding of transportation contract services to vendors. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of third parties, including Kerrville Bus Company, Inc. ("KBC"). Accordingly, you inform us 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 KBC. We have considered the submitted arguments and reviewed the submitted information.

You have not submitted the district's policy on the awarding of transportation contract services to vendors. 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 id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude any 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 the remaining third parties may have in the information.

KBC seeks to withhold information not submitted by the district. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because portions of the information KBC seeks to withhold was not submitted by the district, this ruling does not address such information and is limited to the information submitted as responsive by the district.

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). 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. KBC states it has competitors. In addition, KBC states release of its pricing information would cause substantial competitive harm by allowing its competitors to tailor their proposals to be more competitive. 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, 839. After review of the information at issue and consideration of the arguments, we find KBC has established the release of the information at issue would give an advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we marked under section 552.104(a). 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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/eb

Ref: ID# 761048

Enc. Submitted documents

c: Requestor  
(w/o enclosures)