



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



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June 20, 2019

Ms. Karen Evertson  
Counsel for the Uvalde County Appraisal District  
Evertson & Sanchez, P.C.  
6101 Sheridan Avenue  
Austin, Texas 78723

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2019-16768

Dear Ms. Evertson:

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# 771577.

The Uvalde County Appraisal District (the "district"), which you represent, received a request for a specified contract, as well as specified attorney fee billing information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Carl J. Kolb, P.C. ("Kolb") and Perdue, Brandon, Fielder, Collins, and Mott, L.L.P. ("Perdue Brandon"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 Kolb and Perdue Brandon. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552:301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or

sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The district received the request for information on March 29, 2019. The district does not inform us it was closed for any business days between March 29, 2019, and April 19, 2019. The district was required to provide the information required by section 552.301(e) by April 19, 2019. However, the envelope in which the district provided the information required by section 552.301(e) was postmarked June 7, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The district claims section 552.103 of the Government Code for the submitted information. Because the interests of third parties can provide compelling reasons to overcome the presumption of openness, we will consider whether a portion of the submitted information may be withheld on behalf of Kolb and Perdue Brandon. However, we find the district has failed to establish a compelling reason to address its claimed exception.

Kolb asserts a portion of the submitted information is excepted under section 552.103 of the Government Code. However, we note section 552.103 is designed to protect the interests of governmental bodies and not the interests of third parties. Gov't Code § 552.103 (excepts from disclosure litigation or settlement negotiations involving the state or a political subdivision). As noted above, the district waived its claim under section 552.103 of the Government Code for the submitted information. *See id.* § 552.302; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Thus, we do not address Kolb's argument under section 552.103 of the Government Code.

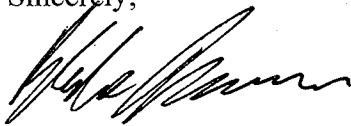
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). In considering whether a private third party may assert this exception, the supreme court reasoned because section 552.305(a) of the Government Code includes section 552.104 as an example of an exception that involves a third party's property interest, 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. Perdue Brandon asserts section 552.104 for a portion of the information at issue. Perdue Brandon states it has competitors. In addition, Perdue Brandon states release of the information at

issue would provide an advantage to its competitors, and result in “substantial competitive injury” for Perdue Brandon. 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 841. After review of the information at issue and consideration of the arguments, we find Perdue Brandon 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 marked under section 552.104(a) of the Government Code.<sup>1</sup> 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,



Blake Brennan  
Attorney  
Open Records Division

BB/eb

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<sup>1</sup>As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

Ref: ID# 771577

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)

Cause No. D-1-GN-19-003756

UVALDE COUNTY APPRAISAL DISTRICT, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ATTORNEY GENERAL OF THE STATE OF TEXAS, <i>Defendant.</i>	§	
	§	
	§	345TH JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, Uvalde County Appraisal District (UCAD) and Ken Paxton, Attorney General of Texas, (Attorney General) announced to the Court that all matters of fact and things in controversy between them had been fully and finally resolved.

This case was brought to challenge Letter Ruling OR2019-16768. UCAD received a request for information from Mr. Albert Walker pursuant to the Public Information Act (the "PIA"), Tex. Gov't Code ch. 552. Mr. Walker has now withdrawn his request for information.

Pursuant to Tex. Gov't Code § 552.327(2), the Attorney General represents to the Court Mr. Walker has, in writing, voluntarily withdrawn his request for information, (2) in light of this withdrawal, the parties agree that the lawsuit is now moot, and (3) pursuant to Tex. Gov't Code § 552.327(1), the parties agree to the dismissal of this cause.

**IT IS THEREFORE ORDERED** that:

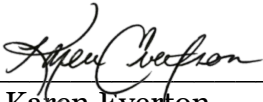
1. Because the request was withdrawn, no information should be released in reliance on Letter Ruling OR2019-16768. Letter Ruling OR2019-16768 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).

2. All costs of court are taxed against the parties incurring same.
3. This cause is hereby DISMISSED without prejudice.

SIGNED on August 3, 2020.

  
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JUDGE PRESIDING

AGREED:



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***ATTORNEY FOR DEFENDANT***