



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2019

Mr. John Hopkins
Counsel for Channelview Independent School District
Thompson & Horton, L.L.P.
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7554

OR2019-20188

Dear Mr. Hopkins:

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# 775964.

The Channelview Independent School District (the "district"), which you represent, received a request for specified information related to a request for proposals. The district claims some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of Longhorn Bus Sales ("Longhorn"). Accordingly, the district states, and provides documentation showing, it notified Longhorn of the request for information and of its 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 reviewed the submitted arguments and 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

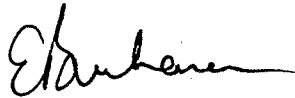
comments from Longhorn explaining why the submitted information should not be released. Therefore, we have no basis to conclude Longhorn has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial 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 the submitted information on the basis of any proprietary interest Longhorn 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 (Tex. 2015). Although you raise section 552.104, you make no arguments explaining the applicability of this section to the information at issue. Accordingly, we find the district has failed to establish the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may not withhold the submitted information under section 552.104(a) of the Government Code. Accordingly, the district must release the submitted 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, 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,



Emily Buchanan
Attorney
Open Records Division

EB/be

Ref: ID# 775964

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)