



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2019

Mr. Allen M. Keller
Counsel for IDEA Public Schools
Schulman, Lopez, Hoffer & Adelstein, LLP
845 Proton Road
San Antonio, Texas 78258

OR2019-20739

Dear Mr. Keller:

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# 777588.

IDEA Public Schools ("IDEA"), which you represent, received a request for all information concerning the requestor, including all communications between Charter Substitute Teacher Network ("CSTN") and IDEA regarding the requestor during a specified time period, specified financial statements, the service agreement between CSTN and IDEA, specified employee and student handbooks, and certain information pertaining to IDEA's information technology services. IDEA states it has released some information to the requestor. Although IDEA takes no position regarding whether the submitted information is excepted from disclosure under the Act, IDEA informs us its release may implicate the proprietary interests of CSTN. Accordingly, IDEA states, and provides documentation showing, it notified CSTN of the request for information and of 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 arguments from CSTN. We have considered the submitted arguments and reviewed the submitted 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). 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. CSTN states it has competitors. In addition, CSTN explains release of the information at issue would give its competitors an advantage. We note CSTN seeks to withhold pricing terms pertaining to the current specified 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 839. After review of the information at issue and consideration of the arguments, we find CSTN established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude IDEA may withhold the information CSTN seeks to withhold, which we marked, under section 552.104(a) of the Government Code.¹ IDEA 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/>

¹As our ruling is dispositive, we need not address CSTN’s remaining arguments 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 777588

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)