



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 7, 2019

Mr. Augustin Rivera, Jr.
General Counsel
Del Mar College
101 Baldwin Boulevard
Corpus Christi, Texas 78404-3897

OR2019-21801

Dear Mr. Rivera:

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# 779339 (DMC Ref Nos. 019-0026 and 019-0033).

Del Mar College (the "college") received two requests from different requestors for information related to a specified request for proposals, including the submitted proposals, subcontractor lists, and scoring sheets for all bidders, and reference response sheets for the requestors' proposals. Although the college takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Barcom Construction, Inc.; B.E. Beecroft Co., Inc.; Fulton*Coastcon General Contractors ("Fulton"); Journeyman Construction, LLC; SpawGlass Contractors, Inc. ("SpawGlass"); and Teal Construction Company.¹ Accordingly, you state, and provide documentation showing, you notified these third parties of the request

¹We note the college did not comply with section 552.301 of the Government Code in requesting this decision. See Gov't Code § 552.301(b), (e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the public availability of the submitted information. See *id.* §§ 552.007, .302, .352.

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 Fulton and SpawGlass. 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have 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 college may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

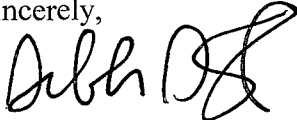
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 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. Fulton and SpawGlass state they have competitors. In addition, Fulton and SpawGlass state release of their information at issue would provide their competitors with an advantage. After review of the information at issue and consideration of the arguments, we find Fulton and SpawGlass have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the college may withhold Fulton's and SpawGlass's submitted proposals and the information we marked under section 552.104(a) of the Government Code.² The college 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.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 779339

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: 4 Third Parties
(w/o enclosures)