



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 10, 2019

Ms. JoAnna Talley  
Legal Services  
Fort Worth Independent School District  
100 North University Drive, Suite SW 172  
Fort Worth, Texas 76107

OR2019-28559

Dear Ms. Talley:

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# 790694.

The Fort Worth Independent School District (the "district") received a request for the bid tabulation and winning proposal for a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of BloomBoard, Inc. ("BloomBoard").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified BloomBoard of the request for information and of its right to submit arguments to this office as to why the information at issue 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

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<sup>1</sup> We note the district did not comply with the requirements of section 552.301(b) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(b). Nonetheless, we note the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

explain applicability of exception in the Act in certain circumstances). We have received arguments from BloomBoard. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note that you have not submitted the requested bid tabulation. To the extent any additional responsive information existed on the date the district received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* 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).

Next, we note BloomBoard seeks to withhold information not submitted to this office 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 this information was not submitted by the district, this ruling does not address this information and is limited to the information submitted as responsive by the district.

BloomBoard asserts portions of its information are protected under section 552.104 of the Government Code. Section 552.104(a) 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. BloomBoard states it has competitors, which includes the requestor. In addition, BloomBoard states "release of such information to [a competitor] seeking to do business with [the district] and with other school districts seeking similar professional development services and products would give competitive advantage to that company." After review of the information at issue and consideration of the arguments, we find BloomBoard has established the release of the information at issue, which we indicated, would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information at issue under section 552.104(a) of the Government Code.<sup>2</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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

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<sup>2</sup> As our ruling is dispositive, we need not address BloomBoard's remaining argument against disclosure.

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/gw

Ref: ID# 790694

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)