



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2019

Ms. Kristi Godden
Counsel for the Edinburg Consolidated Independent School District
O'Hanlon, Demerath & Castillo
808 West Avenue
Austin, Texas 78701-2208

OR2019-29646

Dear Ms. Godden:

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# 792335 (ID# E000984).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for the bid tabulations for a specified request for proposal. Although you take 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 Cascade School Supplies; Cielo Office Products; Gateway Printing & Office Supply, Inc.; Hertz Furniture Systems, LLC; Indeco Sales, Inc.; J.R., Inc.; Lakeshore Equipment Company d/b/a Lakeshore Learning Material ("Lakeshore"); Lone Star Furnishings; Office Depot Inc.; Office Furniture for Less; School Specialty, Inc.; and Texas Furniture Source. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their 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 received comments from Lakeshore. We have considered the submitted arguments and reviewed the submitted information.

We note some of the information you have submitted is not responsive to the request because it does not consist of bid tabulations. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release such information in response to this request.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the remaining third parties. Thus, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of 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. Lakeshore states it has competitors. In addition, Lakeshore states release of its pricing information would give an advantage to its competitors by allowing other bidders to learn its approach to pricing, discounts, and proposals. After review of the information at issue and consideration of the arguments, we find Lakeshore has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Lakeshore's pricing information under section 552.104(a).¹ As we have not received any arguments against disclosure of the remaining information, 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 Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

¹ As our ruling is dispositive, we need not address Lakeshore's remaining argument against disclosure of this information.

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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/rm

Ref: ID# 792335

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)