



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 30, 2019

Mr. Fred A. Stormer  
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OR2019-30719

Dear Mr. Stormer:

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# 792710.

The Floydada Independent School District (the "district"), which you represent, received a request for the most recent winning bid for certain banking services. 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 Prosperity Bank ("Prosperity"). Accordingly, you state, and provide documentation showing, the district notified Prosperity 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 received comments from Prosperity. 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). 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. Prosperity states it has competitors. Prosperity further asserts release of portions of its information at issue would give its competitors an unfair advantage in future competitive bidding processes with the district or other entities. After review of the information at issue and consideration of the arguments, we find Prosperity has

established the release of the information it marked would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information Prosperity marked under section 552.104(a) of the Government Code.<sup>1</sup>

Prosperity asserts some of the remaining information is subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the information at issue consists of e-mail addresses that are specifically excluded by section 552.137(c). *See id.* Thus, the district may not withhold any of the remaining information at issue under section 552.137 of the Government Code.

In summary, the district may withhold the information Prosperity marked under section 552.104(a) of the Government Code. 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 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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/gw

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<sup>1</sup> As our ruling is dispositive, we need not address Prosperity’s remaining arguments against disclosure of this information.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)