



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Mr. W. Montgomery Meitler
Senior Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2019-32653

Dear Mr. Meitler:

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# 797303 [PIR# 39673].

The Texas Education Agency (the "agency") received a request for the winning proposal pertaining to RFP 701-19-032. Although you take no position as to whether the submitted information may be excepted from disclosure, you state release of the submitted information may implicate the proprietary interests of SPEDIS, LLC ("SPEDIS"). Accordingly, you state, and provide documentation showing, you notified this third party 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 SPEDIS. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note SPEDIS seeks to withhold certain information not submitted to this office by the agency. 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 a portion of the information SPEDIS seeks to withhold was not submitted by the agency, this ruling does not address such information and is limited to the information submitted as responsive by the agency.

SPEDIS claims the information at issue is excepted from disclosure under section 552.104 of the Government Code.¹ Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. SPEDIS states it has competitors. In addition, SPEDIS states the release of the information at issue would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find SPEDIS has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the agency may withhold the submitted information under section 552.104(a) of the Government Code.²

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

¹ We note SPEDIS raises section 552.1101 of the Government Code. The Eighty-sixth Legislature amended section 552 of the Government Code to include section 552.1101. Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 5 (to be codified at Gov’t Code § 552.1101). However, the amended law applies only to a request for information that the governmental body receives on or after January 1, 2020, the effective date of the amendment. *Id.* A request for information received before the effective date of the amendment is governed by the law in effect on the date the governmental body received the request. Here, the agency received the request on September 3, 2019 so we do not address SPEDIS’s arguments under section 552.1101.

² As our ruling is dispositive, we need not address SPEDIS’s remaining argument against disclosure of the submitted information.

Ref: ID# 797303

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)