



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 25, 2019

Mr. Andrew Tatgenhorst
Counsel for the Pampa Independent School District
Underwood Law Firm, P. C.
P.O. Box 164327
Austin, Texas 78746

OR2019-33240

Dear Mr. Tatgenhorst:

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# 797617.

The Pampa Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to purchase orders during a specified time period.¹ 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 multiple third parties. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their 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 explain applicability of exception in the Act in certain circumstances). We have received comments from Alert Services, Inc. ("Alert"); Ben E. Keith Company ("BEK"); Blue Star Bus Sales, Ltd. ("Blue Star"); Frontline Technologies Group, LLC ("Frontline"); Infection Controls, Inc. d/b/a Germblast ("Germblast"); J. D. Palatine

¹ We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

("JDP"); Pitney Bowes ("PB"); Pocket Nurse Enterprises, Inc. ("Pocket Nurse"); Rheams Diamond Shop ("Rheams"); and SPBS, Inc. ("SPBS"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-11866 (2019). In Open Records Letter No. 2019-11866, we concluded the district may withhold certain information under section 552.104 of the Government Code and must release the remaining information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the district may continue to rely on Open Records Letter No. 2019-11866 as a previous determination and withhold or release the identical information in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information was not subject to prior ruling, we will address the submitted arguments.

Next, we note Pocket Nurse argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the district has submitted to us for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the district submitted as responsive to the request for information.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any remaining third party has 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 district may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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. Alert, BEK, Blue Star, Frontline, Germblast, JDP, PB, Pocket Nurse, Rheams, and SPBS state they have competitors. In addition, Alert, BEK, Blue Star, Frontline, Germblast, JDP, PB, Pocket Nurse, Rheams, and SPBS state the information at issue would give advantage to their competitors. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of the arguments, we find Alert, BEK, Blue Star, Frontline, Germblast, JDP, PB, Pocket Nurse, Rheams, and SPBS have established the release of the information they seek to withhold would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we indicated under section 552.104(a) of the Government Code.³

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the district may continue to rely on Open Records Letter No. 2019-11866 as a previous determination and withhold or release the identical information in accordance with that ruling. The district may withhold the information we indicated 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->

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 797617

Enc. Submitted documents

c: Requestor
(w/o enclosures)