



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2019

Ms. Iris Y. Gonzalez
Senior Legal Counsel
East Austin College Prep
6002 Jain Lane
Austin, Texas 78721

OR2019-33708

Dear Ms. Gonzalez:

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# 803112.

East Austin College Prep ("EAPrep") received a request for purchase records for a specified time period. You state you released some information to the requestor. 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 multiple third-party vendors. Accordingly, you state, and provide documentation showing, EAPrep notified the third parties of the request for information and of the 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 Learning Materials ("Lakeshore") and Eichelbaum, Wardell, Hansen, Powell and Munoz, P.C. We have considered the submitted arguments and reviewed the submitted 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have 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, EAPrep may not withhold the submitted information on the basis of any proprietary interest these remaining third parties may have in the information.

Section 552.104(a) of the Government Code exempts 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. Lakeshore also states release of its information would allow bidders to learn its ultimate price point and its approach to pricing, discounts, and proposals to EAPrep. In addition, Lakeshore states release of its pricing information would cause harm. 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 EAPrep may withhold Lakeshore’s pricing information, which we marked, under section 552.104(a) of the Government Code on behalf of Lakeshore.¹ EAPrep 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,



Pearlie Gault
Attorney
Open Records Division

PG/eb

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

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Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)