



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 18, 2019

Ms. Cynthia A. Arras  
Employee Relations  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2019-35851

Dear Mr. Arras:

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# 802490 (ORR 19-01).

The El Paso Community College (the "college") received a request for the rates charged by ScottHulse, PC ("ScottHulse"). 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 ScottHulse.<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified ScottHulse 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 ScottHulse. We have reviewed the submitted information and considered the submitted arguments.

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<sup>1</sup> Although you raise section 552.110 of the Government Code, we note section 552.110 protects the interests of third parties that provide information to governmental bodies, not the interests of the governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Thus, we do not address the college's argument under section 552.110 of the Government Code. Further, we note the college did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, we note the requestor seeks only the rates charged by ScottHulse. The college has submitted documents that contain information beyond this specific piece of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the college is not required to release that information in response to the request.

Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 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, 839 (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. ScottHulse states it has competitors. In addition, ScottHulse states release of the information at issue would give advantage to its competitors and seeks to withhold some of the terms of the contract at issue. 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 832. After review of the information at issue and consideration of the arguments, we find ScottHulse has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the college may withhold the responsive information under section 552.104(a) of the Government Code.<sup>3</sup>

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

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

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,

A handwritten signature in black ink, appearing to read "Meagan Hunter". The signature is written in a cursive, flowing style.

Meagan Hunter  
Assistant Attorney General  
Open Records Division

MH/be

Ref: ID# 802490

Enc. Submitted documents

c: Requestor  
(w/o enclosures)