



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2020

Ms. Maya Smith
Program Coordinator
Lone Star College System
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2020-00397

Dear Ms. Smith:

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# 813315 (ORR No. 20-102).

Lone Star College (the "college") received a request for information pertaining to a specified bid proposal.¹ The college claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the college states release of the submitted information may implicate the proprietary interests of Brainfuse, Inc. ("Brainfuse"). Accordingly, the college states, and provides documentation showing, it notified this interested third party of the request for information and of its right to submit arguments to this office. *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 Brainfuse. 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). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The college represents the submitted

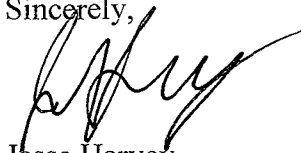
¹The college states, and provides documentation demonstrating, that it sought and received clarification of the information requested. *See* Gov't Code §552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

information pertains to a competitive bidding situation in which the college solicits bids and awards contracts for similar services on a recurring basis. In addition, the college states release of the information at issue would give future potential bidders an unfair advantage. After review of the information at issue and consideration of the arguments, we find the college has established the release of the information at issue would give advantage to a competitor or bidder. Accordingly, we conclude the college may withhold the submitted information under section 552.104(a) of the Government Code.²

Finally, you request this office issue a previous determination that would permit the college to withhold from disclosure pricing information of bidders who provided bids in response to solicitations for services from the college, but did not receive contractual awards based on those bids, under section 552.104 of the Government Code without the need of requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, 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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/eb

Ref: ID# 813315

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.