



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 22, 2020

Mr. Ross Laughead
General Counsel
Alamo Community College District
2222 North Alamo, Room 304
San Antonio, Texas 78215

OR2020-01943

Dear Mr. Laughead:

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# 807376.

The Alamo Community College District (the "district") received two requests from different requestors for information pertaining to a specified request for proposals. You state you are releasing some information to the first requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the information may implicate the proprietary interests of A-Check Global; AccuSource, Inc. ("AccuSource"); applya occupational strategies; JD Palatine, LLC ("JDP"); and Pre-Employ. Accordingly, you state you notified these third parties of the request for information and of their rights 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 AccuSource, JDP, and Pre-employ. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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) of the Government Code 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

the remaining 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, the district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the 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. AccuSource, Pre-employ, and JDP state they have competitors. In addition, AccuSource, Pre-employ, and JDP state release of the information at issue would give their competitors an advantage. After review of the information at issue and consideration of the arguments, we find AccuSource, Pre-employ, and JDP have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the JDP’s information in its entirety and the information we marked under section 552.104(a) of the Government Code.¹ 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-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,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jxd

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

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Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

5 Third Parties
(w/o enclosures)