



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2020

Ms. Valerie A. Carrillo
Counsel for the Pflugerville Independent School District
Escamilla & Poneck, L. L. P.
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2020-02500

Dear Ms. Carrillo:

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# 808408 (ORR# 113-2019).

The Pflugerville Independent School District (the "district"), which you represent, received a request for a specified contract and information pertaining to outstanding debt, substituted meals and complaints regarding food services. 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 Aramark Educational Services, LLC ("Aramark"). Accordingly, you state you notified Aramark of the request for information and of its 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 Aramark. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted the specified contract. To the extent any additional information responsive to this request existed and was maintained by the district on the date the district received the request, we assume the district has released it. If the

district has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. Aramark states it has competitors. In addition, Aramark states release of its information would give an advantage to its 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 Aramark has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.

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,

A handwritten signature in black ink that reads "D. michelle case" with a long horizontal line extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/jxd

Ref: ID# 808408

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)