



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 26, 2020

Ms. Kristi Godden  
Counsel for the Edinburg Consolidated Independent School District  
O'Hanlon, Demerath & Castillo  
808 West Avenue  
Austin, Texas 78701

OR2020-06166

Dear Ms. Godden:

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# 813770 (ORR Nos. E001117-120219, E001108-112019).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received two requests for the awards and bid tabulations pertaining to specified projects. You state the district does not have information responsive to a portion of the request.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state you notified Aircool Tech-ACT, Corp.; Leslie's Poolmart, Inc.; Mechanical Reps; Oslin Nation Co.; RKN Enterprise; South Texas Pools; and Wilbanks & Associates, Inc. of the request for information and of their 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 considered the exception you claim 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 to submit its reasons, if any, as to why information relating to

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<sup>1</sup> The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the third parties. Thus, we have no basis to conclude a third party has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest a third party 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). 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 (Tex. 2015). You state the submitted information relates to bids for certain goods and services. You explain the district seeks bids for these services on a recurring basis. You assert release of the information at issue would interfere with the district’s bargaining position and “provide a competitive advantage to bidders in future bids.” After review of the information at issue and consideration of the district’s arguments, we find you 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 information you indicated under section 552.104(a) of the Government Code. As we have not received arguments against the disclosure of the remaining information, the district must release it.

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,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/eb

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Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)