



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2020

Ms. Leandra Costilla Ortiz
Counsel for the Rio Hondo Independent School District
Walsh, Gallegos, Trevino, Russo, & Kyle P.C.
6770 West Expressway 83, Suite 301
Harlingen, Texas 78552

OR2020-08989

Dear Ms. Ortiz:

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# 817597.

The Rio Hondo Independent School District (the "district") received a request for a specified financial audit, documents showing specified purchases from American Surveillance Company ("ASC"), and specified types of communications between certain district officials during a specified time period. You state the district will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of ASC. Accordingly, you state, and provide documentation showing, you notified ASC 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 ASC. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district sought clarification from the requestor for the third category of information requested. *See* Gov't Code § 552.222 (providing that 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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state the district has not received a response from the requestor for this portion of the request. Thus, for the portion of the request for which you have sought but not received clarification, we find the district is not required to release information in response to this portion of the request. However, if the requestor clarifies this portion of the request for information, the district must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

ASC argues the request for information is overbroad. A governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Because the district has submitted information our review, we consider it to have made a good-faith effort to identify information responsive to the request. Therefore, we will address the applicability of the submitted arguments to the submitted information.

Next, we note ASC states it does not object to the release of purchase orders or records of payment from the district. We note most of the submitted information consists of purchase orders or records of payment from the district. However, ASC asserts exceptions to the required public disclosure of information the district has not submitted for our review. This ruling does not address information beyond what the district has submitted to us for review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the district submitted as responsive to the request for information. *See id.*

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. ASC argues section 552.104 for the remaining information, which consists of a purchase requisition. Upon review, we find ASC failed to demonstrate the applicability of section 552.104(a) to the remaining information. Accordingly, the district may not withhold the remaining information under section 552.104(a) of the Government Code. The district must release the submitted 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 817597

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)