



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2020

Mr. Stephen J. Venzor  
Counsel for the El Paso Community College District  
ScottHulse P.C.  
201 East Main Drive, Suite 1100  
El Paso, Texas 79901

OR2020-27615

Dear Mr. Venzor:

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# 851305 (EPCCD ORR 20-40 & 20-42).

The El Paso Community College District (the "district"), which you represent, received two requests from different requestors for a specified agreement between the district and SoniqWave Networks, LLC ("SoniqWave"). Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of SoniqWave. Accordingly, you state, and provide documentation showing, you notified SoniqWave 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 SoniqWave. We have reviewed the submitted arguments and the submitted information.

SoniqWave asserts the agreement at issue is confidential because it includes a confidentiality provision. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code

§ 552.110). Consequently, unless the information falls within an exception to disclosure, the district must release it, notwithstanding any expectations or agreement specifying otherwise.

Section 552.110(c) of the Government Code excepts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(c). SoniqWave argues the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, we find SoniqWave has demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked under section 552.110(c) of the Government Code. However, we find SoniqWave has failed to provide specific factual evidence demonstrating the remaining information constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the remaining information may not be withheld under section 552.110(c) of the Government Code, and 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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/rm

Ref: ID# 851305

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)