



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 20, 2022

Mr. Scott W. Thomas  
Counsel for the Arlington Independent School District  
Eichelbaum, Wardell, Hansen, Powell & Munoz, P.C.  
5801 Tennyson Parkway, Suite 360  
Plano, Texas 75024

OR2022-01614

Dear Mr. Thomas:

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# 927909 (ORR# ).

The Arlington Independent School District (the "district"), which you represent, received a request for the bid evaluations and the winning bid for request for proposals number 22-11. The district states it is releasing some of the requested information. The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of Southern Counties Oil Co., a California Limited Partnership, d.b.a. SC Fuels ("SC Fuels"). Accordingly, the district states, and provides documentation showing, it notified SC Fuels of the request for information and of the 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 SC Fuels. We have reviewed the submitted arguments and the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." 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, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which the district has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.<sup>1</sup>

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,

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jxd

Ref: ID# 927909

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.