



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 14, 2016

Ms. Karla Schultz
Counsel for Hays Consolidated Independent School District
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2016-05786

Dear Ms. Schultz:

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# 601500.

The Hays Consolidated Independent School District (the "district"), which you represent, received a request for a specified proposal. Although the district takes 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 Southwest Foodservice Excellence ("SFE"). Accordingly, you state, and provide documentation showing, you notified SFE 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 submitted by counsel for SFE. We have considered the submitted arguments and reviewed the submitted information.

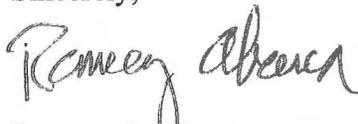
SFE claims the submitted information is excepted under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing 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. SFE states it has competitors. In addition, SFE states release of the information at issue would provide competitors insight into SFE's proprietary information and put SFE at an extreme

disadvantage in the market place. After review of the information at issue and consideration of the arguments, we find SFE 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 at issue under section 552.104(a).¹

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 601500

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Southwest Foodservice Excellence
c/o Ms. Meghan Paulk Ingle
DLA Piper, L.L.P.
401 Congress Avenue, Suite 2500
Austin, Texas 78701
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.