

Office of the Attorney General  
State of Texas  
Informal Letter Ruling No. OR2017-28015  
December 11, 2017

Mr. Ross Laughead  
General Counsel  
District Office of Legal Services  
Alamo Colleges District  
201 West Sheridan, Building C-8  
San Antonio, Texas 78204-1429

Dear Mr. Laughead:

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# 688127.

The Alamo Community College District (the "district") received a request for information pertaining to a specified bidding situation. You state you have no information responsive to a portion of the request.<sup>1</sup> You state you have released some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of Broaddus & Associates; Project Control, Inc. ("Project Control"); AECOM Technical Services, Inc.; Lockwood, Andrews & Newman, Inc. ("Lockwood"); AG/CM, Inc.; Work5hop; and McKissack & McKissack of Washington, Inc. Accordingly, you state, and provide documentation demonstrating, you notified the third parties of the request for information and of their 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 from Project Control and Lockwood. We have reviewed the submitted information and considered the submitted arguments.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under [section 552.305\(d\) of the Government Code](#) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See [Gov't Code § 552.305\(d\)\(2\)\(B\)](#). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the submitted information. See *id.* § 552.110; 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 the submitted information on the basis of any proprietary interest the remaining third parties 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\(a\)](#). In considering whether a private third party may assert this exception, the supreme court reasoned because [section 552.305\(a\) of the Government Code](#) includes [section 552.104](#) as an example of an exception that involves a third party's property interest, 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. Project Control states it has competitors. In addition, Project Control states release of its information at issue would provide an unfair advantage to its competitors. Lockwood states it has competitors. In addition, Lockwood states release of some of its information at issue would give a competitive advantage to its competitors. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. [Gov’t Code § 552.022\(a\)\(3\)](#) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, [section 552.104](#) is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find Project Control and Lockwood have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Project Control’s information at issue and the information Lockwood seeks to withhold, which we indicated, under [section 552.104\(a\) of the Government Code](#).<sup>2</sup> The district must release the remaining 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

April Philley  
Assistant Attorney General  
Open Records Division

#### Footnotes

<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> As our ruling for this information is dispositive, we need not address the remaining arguments against its disclosure.