

Office of the Attorney General
State of Texas
Informal Letter Ruling No. OR2017-23038
October 10, 2017

Ms. Kristi Godden
Counsel for the Edinburg Consolidated Independent School District
O'Hanlon, Demerath & Castillo
808 West Avenue
Austin, Texas 78701-2208

Dear Ms. Godden:

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# 679431 (EISD ID# W000188).

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for information pertaining to five specified projects. You state the district does not have information responsive to portions of the request.¹ You claim some of the submitted information is excepted from disclosure under [section 552.104 of the Government Code](#). Further, you state release of some of the submitted information may implicate the proprietary interests of Aircool Tech; Johnson Controls, Inc.; Johnson Supply; and Trane Company. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 considered the exception you claim and reviewed the submitted information.

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\(d\)](#) 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 third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties have protected proprietary interests 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 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\(a\)](#). 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 (Tex. 2015). You state Exhibit 2 relates to a bid for certain goods. You explain the district seeks bids for these goods on a recurring basis. You assert release of Exhibit 2 would provide a competitive advantage to bidders in future bids. After review of the information at issue and consideration of the district's arguments, we find you have established the release of Exhibit 2 would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Exhibit 2 under [section](#)

[552.104\(a\) of the Government Code](#). As no other exceptions to disclosure have been raised, 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, 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,

Paige Thompson
Assistant Attorney General
Open Records Division

Footnotes

- ¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).