



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2014

Ms. Deborah Shibley
General Counsel
Central Texas College District
P.O. Box 1800
Killeen, Texas 76540-1800

OR2014-01250

Dear Ms. Shibley:

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# 511936.

The Central Texas College District (the "district") received a request for information pertaining to request for proposals 13-012. Although you take 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 COMEVO, LLC ("COMEVO"). Accordingly, you state, and provide documentation showing, you notified COMEVO 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 COMEVO. We have considered the submitted arguments and reviewed the submitted information.

COMEVO raises section 552.104 of the Government Code as an exception to disclosure for its proposal. This section excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. However, section 552.104 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed

to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). As the district does not seek to withhold any information pursuant to section 552.104, no portion of COMEVO's information may be withheld on this basis.

Section 552.110(b) of the Government Code protects “[c]ommercial 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(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 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).

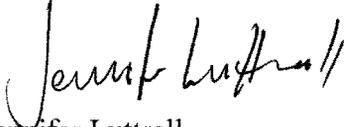
Upon review of COMEVO's arguments under section 552.110(b), we find COMEVO has established that its pricing information and some of its client information, which we have marked, constitute commercial or financial information, the release of which would cause the company substantial competitive injury. Therefore, the district must withhold the information we have marked under section 552.110(b) of the Government Code. We note, however, COMEVO has published its remaining customer information on its website. Thus, COMEVO has failed to demonstrate how release of this information would cause it substantial competitive harm. Further, we find COMEVO has made only conclusory allegations that the release of any of its remaining information would result in substantial damage to the company's competitive position. Thus, COMEVO has not demonstrated that substantial competitive injury would result from the release of any of its remaining information at issue. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative). Accordingly, none of COMEVO's remaining information may be withheld under section 552.110(b).

In summary, the district must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be disclosed.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 511936

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Scott Machado
Manager
Comevo, LLC
P.O. Box 31
San Luis Obispo, California 93406
(w/o enclosures)