



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 23, 2016

Ms. Kristi Godden  
Counsel for Hidalgo Independent School District  
O'Hanlon, McCollom & Demerath  
808 West Avenue  
Austin, Texas 78701

OR2016-14314

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# 615762 (ID# HISD-005).

The Hidalgo Independent School District (the "district"), which you represent, received a request for information related to the district's service contracts with occupational and speech therapists. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Belinda Anaya and JM Therapy Services ("JM Therapy").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified Belinda Anaya and JM Therapy of the request for information and of their 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

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<sup>1</sup>We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because third party interests are at stake, we will consider whether the requested information must be withheld under the Act based on third party interests. *See id.* §§ 552.001, .302, .352.

comments from Belinda Anaya and JM Therapy.<sup>2</sup> We have reviewed the submitted information and the submitted arguments.

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). 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. Belinda Anaya and JM Therapy state they have competitors. Belinda Anaya and JM Therapy state release of the information at issue would give advantage to competitors in future bids for similar services. In addition, Belinda Anaya and JM Therapy state release of the information at issue would cause them harm. 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 832. After review of the information at issue and consideration of the arguments, we find Belinda Anaya and JM Therapy have 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 under section 552.104(a) of the Government Code.<sup>3</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.

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<sup>2</sup>Although JM Therapy raises sections 552.101, 552.110, 552.113, and 552.131 of the Government Code, it has not provided any arguments to support these exceptions. Therefore, we assume JM Therapy has withdrawn its claim these sections apply to the information at issue. *See* Gov’t Code § 552.305.

<sup>3</sup>As our ruling is dispositive, we need not address Belinda Anaya’s remaining argument against disclosure of the information at issue.

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,

A handwritten signature in black ink, appearing to read 'MJC', with a long horizontal flourish extending to the right.

Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 615762

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)