



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2016-22700

Dear Ms. Ellison:

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# 630015 (HISD File No. Tiernan T072116).

The Houston Independent School District (the "district") received a request for the evaluation matrix, proposals submitted by vendors, and any document used to make a decision regarding a specified request for proposal. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of some of the submitted information may implicate the proprietary interests of the following third parties: The Princeton Review, Witty Inventions; 1st Afterschool Providers, LLC; Discover U; Project Grad Houston; Advise TX, Fundamentals 4 Education, LLC; Square One Learning, LLC; AVID; National Math and Science Initiative ("NMSI"); TakeRoot LLC; Barbara Jordan Endeavor Corporation; Naviance, Inc.; Test Masters Educational Services, Inc. ("Testmasters"); UAspire, Inc.; Turner-Provost Institute; Why Try, LLC; and The Bryant Heritage, LLC. Accordingly, you state, and provide documentation showing, you notified these third parties 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 arguments from NMSI and Testmasters. We have considered the submitted arguments and reviewed the submitted 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). The district explains that while vendors have been selected, the contract at issue has not been executed and negotiations are ongoing. Thus, the district states Exhibits 2 and 3 pertain to a competitive bidding situation. The district states disclosure of Exhibits 2 and 3 prior to the execution of contracts could give some firms a competitive advantage over others. After review of the information at issue and consideration of the arguments, we find the district has established the release of Exhibits 2 and 3 would give advantage to a competitor or bidder. Thus, the district may withhold Exhibits 2 and 3 under section 552.104(a) of the Government Code.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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 630015

Enc. Submitted documents

c: Requestor
(w/o enclosures)

17 Third Parties
(w/o enclosures)

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