



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 7, 2017

Mr. Frank E. Pérez  
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OR2017-04812

Dear Mr. Pérez:

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# 648104.

The Texas Southmost College District (the "district") received a request for all proposals submitted to the district in response to request for proposals number 17-01. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that some of the information at issue has previously been made available to the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007(a)*; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The requestor argues the district has released some of the information at issue by presenting the information at an open meeting. However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously

released. Upon review, we have no indication the information at issue has been previously released in its exact form to any members of the public. Accordingly, we find section 552.007 is inapplicable to the submitted information and we will address the district's arguments against its disclosure.

Section 552.104(a) of the Government Code exempts 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 the submitted information relates to a request for proposals which has been closed and for which the district did not award a contract. However, you state, at the time the district received the instant request for information, the district was actively soliciting bids for the exact same services at issue in the closed request for proposals. In addition, you state release of the submitted information would give an advantage to competitors in the current bidding process by revealing pricing, qualifications, and other scope-related issues. After review of the information at issue and consideration of the arguments, we find the district has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a).<sup>1</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.

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Ref: ID# 648104

Enc. Submitted documents

c: Requestor  
(w/o enclosures)