



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 21, 2017

Mr. Amir Roohi
Officer For Public Information or Designee
YES Prep Public Schools
5515 South Loop E Suite B
Houston, Texas 77033

OR2017-05791

Dear Mr. Roohi:

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# 650840.

The YES Prep Public Schools (the "school") received a request for all bid information concerning a specified project. Although you take no position on the submitted information, you state the release of this information may implicate the proprietary interests of UPD Consulting ("UPD") and Certica Solutions ("Certica").¹ Accordingly, you state, and provide documentation showing, you notified UPD and Certica 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 comments from UPD. We have considered the submitted arguments.

¹Although you raise sections 552.022, 552.024, 552.026, and 552.027 of the Government Code, these sections are not exceptions to disclosure. *See* Gov't Code §§ 552.022, .024, .026, .027. Additionally, although you raise 552.101 through 552.152 of the Government Code; Rule 503 of the Texas Rules of Evidence; and Rule 192.5 of the Texas Rules of Civil Procedure, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim these sections apply to the information at issue. *See id.* §§ 552.301, .302.

Initially, we must address the school's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). In this instance, you state the school received the request for information on January 5, 2017. You state the school was closed for business on January 16, 2017. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(e) by January 27, 2017. However, the envelope in which the school provided a copy of the specific information requested, as required by section 552.301(e), was postmarked March 6, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the school failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Nevertheless, because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted third-party arguments against disclosure of the information at issue.

We note 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) of the Government Code 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 Certica explaining why the information at issue should not be released. Therefore, we have no basis to conclude this party has a protected proprietary interest in the information at issue. *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.

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Accordingly, the school may not withhold any portion of the information at issue on the basis of any proprietary interest Certica 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). 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. UPD states it has competitors. In addition, UPD states the information at issue, if released, would give a competitors an unfair advantage and damage UPD’s competitive position in the marketplace. After review of the submitted information and consideration of the arguments, we find UPD has established the release of its submitted information would give advantage to a competitor or bidder. Thus, we conclude the school may withhold UPD’s information under section 552.104(a).²

In summary, the school may withhold UPD’s information under section 552.104(a) of the Government Code. The school 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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/nmd

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 650840

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)