



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Ms. Lauren Wood  
Counsel for the Plano Independent School District  
Abernathy Roeder Boyd Hullett  
1700 Redbud Boulevard, Suite 300  
McKinney, Texas 75069-1210

OR2017-10451

Dear Ms. Wood:

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# 657603 (District File No. 306).

The Plano Independent School District (the "district"), which you represent, received a request for bid tabulations sheets, specified best and final offer materials, and specified responses related to a specified request for proposals. 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 Frost Bank ("Frost"); JPMorgan Chase Bank, N.A. ("JPMorgan"); LegacyTexas Bank ("Legacy"); and Wells Fargo Bank NA ("Wells Fargo"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 Frost, JPMorgan, and Legacy. We have reviewed the submitted information and considered the submitted arguments.

Initially, 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure.

*See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Wells Fargo explaining why the submitted information should not be released. Therefore, we have no basis to conclude Wells Fargo has a protected proprietary interest in the submitted information. *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. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest Wells Fargo may have in the information.

Next, we note Legacy argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what you have submitted to us for our review. *See Gov't Code* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the district submitted as responsive to the request for information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. Frost, JPMorgan, and Legacy all state they have competitors. In addition, Frost, JPMorgan, and Legacy state release of portions of their information would give an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Frost, JPMorgan, and Legacy have established the release of the information at issue would give advantage to a competitor or bidder. Thus, the district may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup>

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

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

In summary, the district may withhold the information we have marked under section 552.104(a) of the Government Code. The district must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/nmd

Ref: ID# 657603

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)