



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Ms. Leticia D. McGowan  
Assistant General Counsel  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204

OR2017-14483

Dear Ms. McGowan:

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# 664979 (ORR# 16200).

The Dallas Independent School District (the "district") received a request for the bids and final approval decisions for two specified bids for professional services. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of twelve third parties. 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 information at issue should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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 Southern Methodist University and TNTP, Inc. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor states "[i]f the bids are still pending award, I would like to request the information post-award." It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San

Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. See Attorney General Opinion JM-48 at 2 (1983); see also Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the district maintained or had a right of access to as of the date it received the request.

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). You represent the submitted information pertains to competitive bidding situations. You inform us final contracts have not been awarded. You argue release of the information at issue would undermine the contract negotiation process. After review of the information at issue and consideration of the arguments, we find the district has 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>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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/bw

---

<sup>1</sup>As we are able to make this determination, we need not address the remaining arguments against disclosure.

Ref: ID# 664979

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

12 Third Parties  
(w/o enclosures)