



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 12, 2017

Mr. Scott W. Thomas  
Counsel for the Arlington Independent School District  
Eichelbaum, Wardell, Hansen, Powell & Mehl, P.C.  
5801 Tennyson Parkway, Suite 360  
Plano, Texas 75024

OR2017-20891

Dear Mr. Thomas:

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# 675098.

The Arlington Independent School District (the "district"), which you represent, received a request for (1) all bids or proposals made by Imperial Construction, Inc. ("Imperial") on CMR construction contracts and (2) all contracts awarded to Imperial pertaining to any construction method, from a specified date range. The district states it has released some information. The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Further, the district informs us release of this information may implicate the proprietary interests of Imperial. Accordingly, the district states, and provides documentation showing, it notified Imperial of the request for information and of its right to submit arguments to this office as to why the information at issue 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 Imperial. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Imperial informs us, and provides documentation provided to the district showing, the requestor no longer seeks “(i) [Imperial]’s financial statements and any other information related to [Imperial]’s finances, bonding capacity, or bank references; and (ii) any financial information related to officers, directors, or employees of [Imperial].” Accordingly, such information is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the district is not required to release such information in response to this 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). The district represents the information pertains to a competitive bidding situation. In addition, the district states it “will likely request bids for similar construction projects again in the future. By providing the winning bids and proposals to [the requestor], the requestor will have information available on which to calculate its bids and thereby potentially undercut future bids.” 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 responsive information under section 552.104(a) of the Government Code.

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/tdw

Ref: ID# 675098

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)