



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2017

Ms. Nena Chima
Legal Assistant
Harmony Public Schools
9321 West Sam Houston Parkway South
Houston, Texas 77099

OR2017-21080

Dear Ms. Chima:

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# 675503.

Harmony Public Schools ("Harmony") received a request for a list of vendors as well as the awarded vendor's submitted proposal pertaining to Online Assessment and Intervention Services, bid number 2016-3530.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not consist of a list of vendors for the specified bid or the awarded vendor's submitted proposal. This ruling does not address the public availability of non-responsive information, and Harmony is not required to release non-responsive information in response to this request.

¹We note Harmony sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Next, we note the awarded vendor's submitted proposal was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-05784 (2017). In Open Records Letter No. 2017-05784, we concluded Harmony may withhold the information at issue under section 552.104(a) of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude Harmony may continue to rely on Open Records Letter No. 2017-05784 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address your arguments for the remaining information not encompassed by the previous ruling.

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, 841 (Tex. 2015). You represent the remaining responsive information pertains to a competitive bidding situation. You state Harmony solicits bids for similar services on a recurring basis and release of this information would harm its ability to secure contracts related to the provision of online assessment and intervention services the school is obligated to provide. After review of the information at issue and consideration of the arguments, we find Harmony has established the release of the remaining responsive information would give an advantage to a competitor or bidder. Thus, we conclude Harmony may withhold the remaining responsive information under section 552.104(a) of the Government Code.

In summary, Harmony may continue to rely on Open Records Letter No. 2017-05784 as a previous determination and withhold the identical information in accordance with that ruling. Harmony may withhold the remaining 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](#), 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 675503

Enc. Submitted documents

c: Requestor
(w/o enclosures)