



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 10, 2017

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

OR2017-22988

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# 683466.

The Arlington Independent School District (the "district"), which you represent, received a request for a specified request for proposals related to construction project management software. The district claims the requested information is excepted from disclosure under section 552.104 of the Government Code. The district also states, and provides documentation showing, it notified e-Builder, Inc. ("e-Builder") of the district's receipt of the request for information and of e-Builder's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 e-Builder objecting to the release of the information at issue. We have considered the submitted arguments and reviewed the submitted 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). 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). The district represents the information

pertains to a competitive bidding situation. In addition, the district states it will likely request bids for construction project management software again in the future. The district also asserts, if the information is released, "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 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tdw

Ref: ID# 683466

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we do not address the other arguments to withhold this information.