



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2018

Mr. Miles LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2018-00051

Dear Mr. LeBlanc:

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# 689804 (File No. H100317).

The Houston Independent School District (the "district") received a request for information pertaining to two specified requests for proposals.¹ You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state you notified Hancock Pool Services; MacAquatec, LLC; Pool Management, Inc.; Sweetwater Pools, Inc.; and USA Pools of Texas of the request for information and of their right 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 considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to

¹You state the district 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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any of the third parties. Thus, we have no basis to conclude the third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest the third parties may have in the information.

Section 552.104(a) of the Government Code exempts 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 some of the information pertains to a competitive bidding situation. In addition, you state “release of the [information at issue] prior to the execution of the contract could . . . diminish the [d]istrict’s ability to . . . negotiate the most competitive contract.” 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 an advantage to a competitor or bidder. Thus, we conclude the district may withhold the information you indicated under section 552.104(a) of the Government Code. The district must release the remaining information.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 689804

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)