



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 30, 2019

Mr. Allen M. Keller  
Counsel for YES Prep Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

OR2019-02757

Dear Mr. Keller:

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# 748196.

YES Prep Public Schools ("YES Prep"), which you represent, received a request for information pertaining to a specified contract. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state, and provide documentation showing, you notified Wells Fargo Financial Leasing, Inc., of YES Prep's receipt of the request for information and of its 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 considered the claimed exception 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 (Tex. 2015). The submitted information relates to a contract

for services that has been awarded. However, YES Prep explains it seeks bids for these services on a recurring basis, and asserts release of the information at issue would provide a competitive advantage to bidders in future bids for those services. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder were public and generally not excepted from disclosure. Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to the *Boeing* decision, section 552.104 is not limited to only ongoing competitive situations, and it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. Upon review, we find YES Prep has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude YES Prep may withhold the submitted 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,



Deborah Southerland  
Attorney  
Open Records Division

DS/eb

Ref: ID# 748196

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)