



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2019

Ms. Courtney R. Crosby
Public Information Assistant Coordinator
Dallas Independent School District
9400 North Central Expressway, Suite 1675
Dallas, Texas 75231

OR2019-05625

Dear Ms. Crosby:

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# 753424 (Internal File No. R017848-120618).

The Dallas Independent School District (the "district") received a request for information pertaining to contracts for legal services and for a copy of the district's employee directory.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of twenty-one third parties. Accordingly, you state, and provide documentation showing, you notified the interested third parties of the request for information and of its 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 received comments from Brousseau, Naffis, &

¹We understand the district sought clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

Massingill; Lessor Crass, P.C.; Littler Mendelson, P.C.; Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.; Ramirez & Associates, P.C.; and Walsh, Gallegos, Treviño, Russo, & Kyle, P.C. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district did not submit the requested employee directory. To the extent this responsive information existed on the date the district received the request, we assume the district already released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the district has yet to release any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

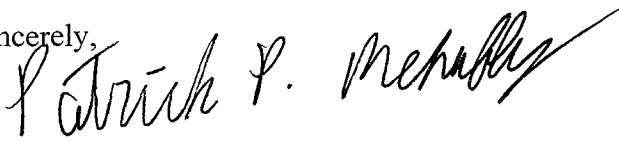
Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You state the submitted information relates to bids for legal services. You indicate the district seeks bids for these services on a recurring basis. You assert release of the information at issue would allow competitors to undercut future bids and “unfairly give future bidders a competitive advantage over others and therefore diminish the [d]istrict’s ability to procure the highest quality goods and services and to negotiate the most competitive contracts.” We note you seek to withhold the terms of contracts. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are 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 *Boeing*, section 552.104 is not limited to only ongoing competitive situations, and a governmental body need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 831, 839. After review of the information at issue and consideration of your arguments, we find you 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.²

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/jxd

Ref: ID# 753424

Enc. Submitted documents

c: Requestor
(w/o enclosures)

21 Third Parties
(w/o enclosures)