



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2019

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

OR2019-08358

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# 762444 (Internal File No. R017967-020619).

The Dallas Independent School District (the "district") received a request for information pertaining to a specified request for proposals. You inform us the district has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim 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). You represent Exhibit 2 pertains to a competitive bidding situation. In addition, you state release of Exhibit 2 could unfairly give future bidders a competitive advantage by allowing vendors to tailor similar responses and

submit similar pricing to the information at issue. This, in turn, would diminish the district's ability to procure the highest quality goods and services and to negotiate the most competitive contracts in 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 an advantage to a competitor or bidder. Thus, we conclude the district may withhold Exhibit 2 under section 552.104(a).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI"). Chapter 411 authorizes the Texas Department of Public Safety (the "DPS") to compile and maintain CHRI from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. See Gov't's Code §§ 411.042, .087. Section 411.0845 of the Government Code provides, in relevant part:

(a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part that "[a] school district . . . is entitled to obtain from the [DPS CHRI] maintained by the [DPS]

that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from the DPS’s electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states that any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097(d) provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

- (A) the individual who is the subject of the information;
- (B) the Texas Education Agency;
- (C) the State Board for Educator Certification;
- (D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or
- (E) by court order[.]

Gov’t Code § 411.097(d)(1). Upon review, we find you have failed to demonstrate any of the remaining information consists of confidential CHRI for purposes of chapter 411. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

In summary, the district may withhold Exhibit 2 under section 552.104 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,

A handwritten signature in black ink, appearing to read "Sean Nottingham". The signature is fluid and cursive, with the first name "Sean" and last name "Nottingham" clearly distinguishable.

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/mo

Ref: ID# 762444

Enc. Submitted documents

c: Requestor
(w/o enclosures)