



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2019

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

OR2019-08522

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# 757265 (ORR# R017890).

The Dallas Independent School District (the "district") received a request for information related to request for proposals number KH-205186. The district claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of All In Learning; Illuminate Education; Otus, L.L.C.; Performance Matters, L.L.C.; Instructure, Inc.; PowerSchool Group, L.L.C.; Eduphoria! Inc.; School Spire, Inc.; and SchoolCity, Inc. Accordingly, the district states, and provides documentation showing, it notified the third parties of the request for information and of the 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 reviewed the submitted arguments and the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-15313 (2018). In that ruling, we determined the district may not withhold the information at issue under section 552.104 or 552.110 of the Government Code because Performance Matters

failed to meet its burden under those exceptions, but must release the information at issue in its entirety. We assume the district did so. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although the district now raises section 552.104 of the Government Code, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the district may not now withhold the information at issue under section 552.104 of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the district must rely on Open Records Letter No. 2018-15313 as a previous determination and release the identical information in accordance with that ruling. However, we will address the district's argument against the release of the remaining information, which was not encompassed by Open Records Letter No. 2018-15313.

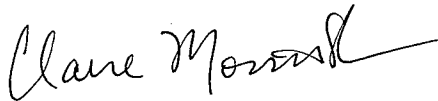
Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The district represents the information at issue pertains to a competitive bidding situation. In addition, the district states the information could be used by competitors to undercut future bids, giving future bidders a competitive advantage over others and diminishing the district's ability to procure the highest quality goods and services and to negotiate the most competitive contracts. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the remaining information under section 552.104(a) of the Government Code.

In summary, the district must rely on Open Records Letter No. 2018-15313 as a previous determination and release the identical information in accordance with that ruling. The district may withhold the remaining 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 757265

Enc. Submitted documents

c: Requestor
(w/o enclosures)

10 Third Parties
(w/o enclosures)