



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 15, 2019

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

OR2019-10079

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# 759333 (Internal File No.: R017922-012319).

The Dallas Independent School District (the "district") received a request for information pertaining to a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Big Thought; Education Elements, Inc.; National Academy Foundation; National Alliance for Partnership in Equity Education Foundation, Inc.; Region 10 Education Services Center; Sibling Group Holdings, Inc.; The Writer's Garret; TPR Education, LLC; and VWR International, LLC ("VWR"). Accordingly, you state, and provide documentation showing, you notified these third parties 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 received comments from VWR. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-01229 (2019). In Open Records Letter No. 2019-01229 we concluded the district must withhold all insurance policy, bank account, and routing numbers within the submitted information under section 552.136 of the Government Code and must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law. We note the district seeks to withhold the submitted information under section 552.104 of the Government Code. We further note some of the information at issue may have been previously ordered released in Open Records Letter No. 2019-01229. Section 552.007 of the Government Code provides that, 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 under 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 any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the district now raises section 552.104 of the Government Code for the submitted information, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n. 5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the district may not now withhold any of the previously released information under section 552.104 of the Government Code. Further, with regard to the submitted information that was not previously released, there is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, we conclude the district must continue to rely on Open Records Letter No. 2019-01229 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* ORD 673. With respect to the information that was not at issue in the previous ruling, we will consider the district's argument under section 552.104 of the Government Code.

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). You represent the submitted information pertains to a competitive bidding situation for goods or services the district consistently seeks. You state this information could be used by competitors to undercut future bids and give future bidders a competitive advantage over others. In addition, you state release of the submitted information would diminish the district's ability to negotiate the most competitive 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 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 831, 839. 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 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.<sup>1</sup>

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2019- 01229, the district must rely on that ruling as a previous determinations and withhold or release the identical information in accordance with that ruling. However, to the extent the information at issue was not subject to Open Records Letter No. 2019-01229, the district 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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/jxd

---

<sup>1</sup>As our ruling is dispositive, we need not address VWR's arguments against disclosure of its information.

Ref: ID# 759333

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

9 Third Parties  
(w/o enclosures)