



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2019

Mr. Guillermo R. Garcia
Counsel for Laredo Independent School District
Kazen, Meurer & Perez, L. L. P.
211 Calle Del Norte, Suite 100
Laredo, Texas 78041

OR2019-14544

Dear Mr. Garcia:

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# 768510.

The Laredo Independent School District (the "district"), which you represent, received a request for information related to a specified request for proposals. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also inform us release of the submitted information may implicate the proprietary interest of Hamer Enterprises; Harris Govern ("Harris"); and Spindlemedia, Inc. Accordingly, you state, and provide documentation showing, the district notified these third parties of the request and the right to submit arguments to this office. *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 Harris. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address Harris' assertion that its information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002 of the Government Code defines "public information" as:

(a) [I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a), (a-1). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); see Open Records Decision No. 462 at 4 (1987). Information is "in connection with the transaction of official business" if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. See Gov't Code § 552.002(a-1).

Harris argues its information at issue is not "public information" subject to the Act. We note, however, the information at issue is in the possession of the district, and the district has

submitted this information as being subject to the Act. Thus, we find the district collected, assembled, or maintains this information in connection with the transaction of official business. Therefore, we find the information at issue constitutes public information subject to the Act and may only be withheld if an exception to disclosure under the Act applies.

Next, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2019-10233 (2019), this office ruled the district may withhold the submitted information under section 552.104(a). We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the district may continue to rely on Open Records Letter No. 2019-10233 as a previous determination, and withhold the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise.

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 the submitted information pertains to a competitive bidding situation. In addition, you state release of submitted information would provide future bidders an advantage and limit the district’s ability to get a substantially better price on similar services. After review of the submitted information and consideration of the arguments, we find the district has established the release of the submitted information would give an advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a).¹

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the district may rely on Open Records Letter No. 2019-10233 as a previous determination and withhold the identical information in accordance with that ruling. The district may withhold the submitted information under section 552.104(a).

¹As our ruling is dispositive, we need not address the remaining arguments.

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,



Emily Buchanan
Attorney
Open Records Division

EB/jxd

Ref: ID# 768510

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)