



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2019

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West Eighteenth Street
Houston, Texas 77092-8501

OR2019-27320

Dear Ms. Ellison:

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# 788139 (File No. B070219).

The Houston Independent School District (the "district") received a request for information pertaining to a specified request for proposals. You claim most of the responsive information is subject to previous rulings. You also 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 Dell Marketing, L.P. ("Dell"). Accordingly, you state, and provide documentation showing, you notified Dell 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 Dell. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2019-14686 (2019) and 2019-18026 (2019). We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, the district may continue to rely on Open Records Letter Nos. 2019-14686 and 2019-18026 as previous determinations and withhold or release the information at issue in accordance with those rulings. 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). We will address your arguments against disclosure of the information not subject to the previous rulings.

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 state the submitted information relates to a bid for goods and services and the district seeks bids for these goods and services on a recurring basis. Further, you state release of the information at issue would allow competitors to undercut future bids and unfairly disadvantage the district in securing favorable contracts for these services. 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 submitted information under section 552.104(a) of the Government Code.¹

In summary, the district may continue to rely on Open Records Letter Nos. 2019-14686 and 2019-18026 as previous determinations and withhold or release the information at issue in accordance with those rulings. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meagan Conway', written over a horizontal line.

Meagan Conway
Assistant Attorney General
Open Records Division

MC/gw

Ref: ID# 788139

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)