



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 24, 2019

Mr. S. Anthony Safi  
Counsel for the El Paso Independent School District  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
100 North Stanton, Suite 1000  
El Paso, Texas 79901

OR2019-30126

Dear Mr. Safi:

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# 793589 (EPISD ORR# W002069-080219).

The El Paso Independent School District (the "district"), which you represent, received a request for information relating to the evaluation of specified district buildings. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the requestor is a representative of a Texas state legislator. Section 552.008 of the Government Code grants access to requested information, including confidential information, to individual members, agencies, or committees of the Texas Legislature. Section 552.008 provides:

(a) [The Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

...

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Gov't Code § 552.008(a)–(b), (c). In this instance, the requestor is a representative of Texas State Representative Evelina Ortega. The requestor does not state, however, and it is not otherwise clear to this office, the request was made for legislative purposes. Accordingly, we must rule on the applicability of section 552.008 in the alternative. If the requestor made this request for legislative purposes, then the district must make the submitted information available to her in accordance with section 552.008 of the Government Code.

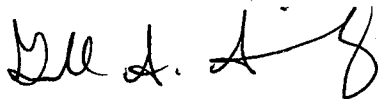
*See id.* § 552.008(b). We note section 552.008 permits a governmental body to require a member of the legislature to sign a confidentiality agreement for the protection of information obtained pursuant to this section. *Id.* In addition, release of this information under section 552.008 does not waive or affect the confidentiality of the information for the purposes of state or federal law or waive the right of the district to assert exceptions to required public disclosure of this information to future requestors. *See id.* But, if this request for information was not made for legislative purposes, then the requested information need not be released under section 552.008, and we will consider your argument against its public disclosure.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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 “will be used in order to formulate solicitations to be published in the future for construction work deemed necessary by the [d]istrict.” You assert “release of these materials at this time would have a detrimental effect on the procurement process for the renovation/rehabilitation/construction work to be solicited in the future[.]” You also assert “[r]elease of these materials at this point would undoubtedly give potential competitors who obtained this information a potential and unfair ‘head start’ advantage over other competitors . . . to the detriment of the [d]istrict.” After review of the information at issue and consideration of the arguments, we find you have established the release of the submitted 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.

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 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,



Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/eb

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)