



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 6, 2019

Mr. Winford Adams, Jr.
Public Information Manager
Harris County Department of Education
6300 Irvington Boulevard
Houston, Texas 77022

OR2019-31370

Dear Mr. Adams:

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# 795895 (ORR Nos. P001554, P001555, P001556, P001559, P001561).

The Harris County Department of Education (the "department") received five requests from different requestors for information related to the bid tabulation for request for proposals number 18/007KD. Two of the requestors additionally seek information related to the bid tabulations for request for proposals numbers 18/002KD, 18/003KD, 18/004KD, 18/006KD, 18/008KD, and 18/009KD, and any request for proposals related to safety and security; and one requestor additionally seeks such information related to request for proposals number 18/005KD.¹ Although the department takes no position as to whether the submitted information is excepted under the Act, the department states release of the submitted information may implicate the proprietary interests of Ace Mart; American Pride Paper and Plastic; Blick Art Materials; BSN Sports; Buckeye Cleaning Center; Butler Business Products; Calico Industrial Supply; Challenge Office Products; Crown Paper & Chemical; CVS; DGS Educational Products; Discount School Supply; Gulf Coast Paper; Heartsafe America; High Point Sanitary Solutions; Liberty Office Products; NAO Global; Nasco; National Art & School Supplies; ORR Textile Company ("ORR"); Products

¹ The department states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Unlimited; Pyramid School Products; S&S Worldwide; School Health; School Specialty; Southern Computer Warehouse; Tree Enterprises; and Wallace Packaging. Accordingly, the department 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 received comments from ORR. We have reviewed the submitted arguments and the submitted information.

Initially, we note the information related to request for proposals number 18/007KD was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2018-17816 (2018) and 2018-25229 (2018). In the prior rulings, we held the department must release the information at issue. With the exception of the information at issue belonging to ORR, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, with the exception of the information at issue belonging to ORR, the department must rely on Open Records Letter Nos. 2018-17816 and 2018-25229 as previous determinations and release the information related to request for proposals number 18/007KD 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note although the department notified ORR of the requests for its information pursuant to section 552.305 of the Government Code in each of Open Records Letter Nos. 2018-17816 and 2018-25229, ORR did not submit comments in response to either of the requests at issue in the previous rulings. Accordingly, we determined in our previous rulings the department must release, among other items, ORR's information. Section 552.007 of the Government Code 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 department may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. In this instance, ORR has submitted arguments to our office. ORR asserts its information is excepted under sections 552.101, 552.104, 552.110, 552.113, and 552.131 of the Government Code. Although ORR raises section 552.104 for its information at issue, 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 department may not now withhold any of ORR's previously released information under section 552.104 of the Government Code. However, we note sections 552.101, 552.110, 552.113, and 552.131 make information confidential under the Act. Therefore, because circumstances have changed with respect to ORR's information, the department may not rely upon the prior rulings as previous determinations for ORR's information, and we will consider the remaining exceptions ORR claims against release of its information. We will also address the public availability of the remaining information, which was not at issue in the previous rulings.

As mentioned above, ORR's proposal was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2018-17816 and 2018-25229. In the prior rulings, the department notified ORR pursuant to section 552.305, and ORR failed to submit any arguments that its information was excepted from disclosure under the Act. Since the issuance of the previous rulings on July 19, 2018, and October 10, 2018, ORR has not disputed this office's conclusions regarding the release of the information at issue, and we presume the department has released the information in accordance with the prior rulings. In this regard, we find ORR has not taken any measures to protect the information in order for this office to conclude the release of any portion of ORR's information may now be withheld. *See* Gov't Code §§ 552.101, .110, .113, .131; RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 319 at 2, 306 at 2, 255 at 2. Accordingly, we conclude the department may not now withhold any portion of ORR's information under any of the exceptions ORR claims.

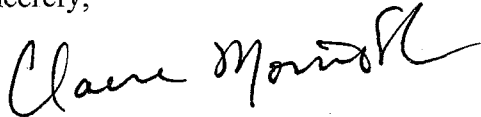
Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the remaining third parties explaining why the remaining information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6, 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold the remaining information on the basis of any proprietary interest the remaining third parties may have in the information.

In summary, with the exception of the information at issue belonging to ORR, the department must rely on Open Records Letter Nos. 2018-17816 and 2018-25229 as previous determinations and release the information related to request for proposals number 18/007KD in accordance with those rulings. The department must release the remaining information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 795895

Enc. Submitted documents

c: 5 Requestors
(w/o enclosures)

28 Third Parties
(w/o enclosures)