



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 18, 2019

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

OR2019-32485

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# 797147 (R018660-082719).

The Dallas Independent School District (the "district") received a request for four categories of information pertaining to contracts for outside legal counsel. You state the district does not have information pertaining to portions of the request.<sup>1</sup> You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. In addition, you state release of the submitted information may implicate the proprietary interests of third parties.<sup>2</sup> Accordingly, you state, and provide documentation showing, the

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<sup>1</sup> We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

<sup>2</sup> The third parties at issue are as follows: Bell Nunnally; Bracewell LLP; West & Associates, LLP; Brackett & Ellis, P.C.; Brewer & Lormand, PLLC; Brotherton Law Firm; Brousseau Naftis & Massingil, P.O.; Clark Hill Strasburger ("CHS"); Curtis Castillo; Escamilla & Poneck, LLP; Fanning Harper Martinson Brandt & Kutchin, P.C. ("FHMBK"); Greenberg Traurig, LLP; Law Office of J. Benjamin Barlow; The Jackson Law Firm; Jackson Walker, LLP; The Law Office Of Camille; Stearns Miller; Leasor Crass; Littler Mendelson, P.C.; Locke Lord, Llp; Melvin & Associates, PLLC; Norton Rose Fulbright & Mahomes Bolden PC; Ogletree Deakins Nash Smoak & Stewart PC ("ODNSS"); O'Hanlon, Demerath & Castillo; Orrick, Herrington & Sutcliffe, LLP; Powell & Leon, LLP; Ramirez & Associates, PC; Robinson & Hoskins, LLP; Simmons Legal

district notified these third parties of the request for information and of their rights 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 CHS, FHMBK, ODNSS, and WGTRK. We have considered the submitted arguments and reviewed the submitted information.

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). The district represents the information at issue pertains to a request for proposals for outside attorneys, including the winning bidders. You state the district solicits bids for the same services on a recurring basis. Further, you state release of the submitted information could unfairly give future bidders a competitive advantage over others and diminish the district's ability to negotiate the most competitive contracts. In addition, the district states release of the submitted information would cause harm in future bids. 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 its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. 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.<sup>3</sup>

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

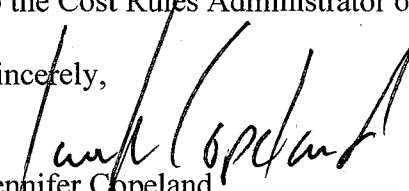
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PLLC; Thompson & Horton, LLP; Underwood Law Firm, P.C.; Vincent Serafino Geary Waddell Jenevein, PC; and Walsh Gallegos Trevino Russo & Kyle PC (“WGTRK”).

<sup>3</sup> As we are able to make this determination, we need not address the remaining arguments against disclosure.

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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/be

Ref: ID# 797147

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

32 Third Parties  
(w/o enclosures)