



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 20, 2019

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

OR2019-32896

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# 796496 (ORR# M090319).

The Houston Independent School District (the "district") received a request for information pertaining to a specified project. You state you will rely on Open Records Letter Ruling No. 2019-14422 (2019) for some of the requested information.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Gallagher Benefit Services, Inc ("Gallagher"). Accordingly, you state, and provide documentation showing, you notified Gallagher of the request for information and of its right to submit arguments to this office as to why the information at issue 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 Gallagher. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> *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).

<sup>2</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.

Section 552.104(a) of the Government Code exempts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. Gallagher states it has competitors. In addition, Gallagher states release of the information at issue would give an advantage to a competitor or bidder because competitors could use the information to undercut future bids. After review of the information at issue and consideration of the arguments, we find Gallagher has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude 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 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,



Jahnnia Ward  
Assistant Attorney General  
Open Records Division

JW/rm

Ref: ID# 796496

Enc. Submitted documents

c: Requestor

Third Party

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.