



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2019

Ms. Sandra D. Carpenter
General Counsel
Round Rock Independent School District
1 Chisholm Trail, Suite 400
Round Rock, Texas 78681

OR2019-34430

Dear Ms. Carpenter:

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# 800503 (TPIA 2020-116).

The Round Rock Independent School District (the "district") received a request for information pertaining to a specified request for proposals and for the names of the individuals who comprise the selection committee for the specified request. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.153 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of certain interested third parties. Accordingly, you indicate you notified these interested third parties of the request for information and of their 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 Linebarger, Goggan, Blair & Sampson, L.L.P. ("Linebarger"). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have submitted only information related to the specified request for proposals. You have not submitted information responsive to the request for the names of members of the selection committee. Although you state the district has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have

submitted for our review. This ruling does not authorize the district to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the remaining portion of the request existed on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Although the district argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepting from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained”). Thus, we do not address the district's argument under section 552.110.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this ruling, we have only received comments from Linebarger. Thus, we have no basis to conclude any of the remaining interested third parties has a protected proprietary interest in the submitted information. *See generally id.* § 552.110(a)-(b); ORDs 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), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest any of the remaining interested third parties may have in the 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). 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. Linebarger states it has competitors and release of the information we marked would cause the firm competitive harm. After review of the information at issue and consideration of the arguments, we find Linebarger has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we marked under section 552.104(a) of the Government Code.¹ Additionally, the district raises section 552.104 of the Government

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

Code for portions of the remaining information. However, upon review, we find the district has failed to demonstrate that any portion of the remaining information would give advantage to a competitor or bidder, and thus, the district may not withhold any portion of the remaining information under section 552.104(a) of the Government Code.

Section 552.153 of the Government Code reads, in relevant part, as follows:

(a) In this section, “affected jurisdiction,” “comprehensive agreement,” “contracting person,” “interim agreement,” “qualifying project,” and “responsible governmental entity” have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

...

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the proposer; [or]

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means[.]

Gov’t Code § 552.153(a), (b)(2)(A)–(B). Section 2267.001(10) of the Government Code defines a “qualifying project” as the following:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project’s purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

Id. § 2267.001(10). Further, section 2267.001(11) defines a “responsible governmental entity” as “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). The district generally asserts it is a “responsible

governmental entity” as defined by section 2267.001(11) and the information at issue relates to “a qualifying project for local tax roll audit services” authorized under chapter 2267. Assuming, without deciding, the district’s assertion is correct, we find the district has not established any of the information it seeks to withhold constitutes a trade secret or that its release would provide a competing proposer an unjust advantage or adversely affect the third parties’ financial interests or bargaining positions. *See generally id.* § 552.110(a)-(b); ORD Nos. 661 at 5-6, 552 at 5, 542 at 3. Accordingly, the district may not withhold any of the information at issue under section 552.153 of the Government Code.

In summary, the district may withhold the information we marked under section 552.104(a) of the Government Code. The district 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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 800503.

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)