



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 18, 2020

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

OR2020-05045

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# 812141 (DISD Internal File No. R018981-111419).

The Dallas Independent School District (the "district") received a request for the top three scored proposals and evaluation data and results for a specified request for proposals. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Deer Oaks EAP Services, LLC; Humana Inc.; and Magellan Healthcare, Inc. Accordingly, you state, and provide documentation showing, the district 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 considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-115399 (2018). In that ruling we determined the district must release the submitted information; however, any information protected by copyright may only be released in

accordance with copyright law. 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. You raise section 552.104 of the Government Code for the submitted information; however, we note section 552.104 does not prohibit the release of information or make information confidential. *See id.* § 552.104. Thus, with respect to the information released pursuant to Open Records Letter No. 2018-115399, the district may not now withhold the previously released information under section 552.104. There is no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, with regard to the information that was at issue in the previous ruling, the district must continue to rely on Open Records Letter No. 2018-115399 as a previous determination and release that information in accordance with that ruling. *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). However, the remaining information you have submitted was not at issue in the previous ruling. Accordingly, we will address your argument against disclosure of this 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). You state Exhibit 2 pertains to a competitive bidding situation. In addition, you state the information at issue could be used by competitors to undercut future bids and unfairly give future bidders a competitive advantage over others and diminish the district's ability to procure the highest quality goods and services. After review of the information at issue and consideration of the arguments, we find you have established the release of the remaining information in Exhibit 2 would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the remaining information in Exhibit 2 under section 552.104(a).

In summary, the district must continue to rely on Open Records Letter No. 2018-115399 as a previous determination and release the submitted information that was at issue in the previous ruling in accordance with that ruling. The district may withhold the remaining information in Exhibit 2 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,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal flourish extending to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 812141

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)