



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 20, 2020

Ms. Amanda M. Bigbee
General Counsel
Keller Independent School District
350 Keller Parkway
Keller, Texas 76248

OR2020-05452

Dear Ms. Bigbee:

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# 813104.

The Keller Independent School District (the "district") received a request for all responses and resulting contracts pertaining to a specified request for proposals. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of UnitedHealthcare Insurance Company ("United"). Accordingly, you state, and provide documentation showing, you notified United of the request for information and of its 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 United. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have submitted only one company's response submitted in response to the request for proposals. To the extent any information responsive to the remaining portions 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* Gov't Code §§ 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).

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. United states it has competitors. In addition, United states providing its competitors with “insider knowledge of United’s confidential bid information, trade secrets, and competitively-sensitive methodologies,” would have a “negative impact on the competitive bidding process” and allow its competitors “to underbid United in future bids for government contracts.” After review of the information at issue and consideration of the arguments, we find United 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 submitted information under section 552.104(a) of the Government Code.¹

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 813104

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

¹ As our ruling is dispositive, we need not address United’s remaining arguments against disclosure.