



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2020

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2020-10888

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# 821674 (Ref. Nos. T012220 and M020720).

The Houston Independent School District (the "district") received two requests from different requestors for pricing information pertaining to a specified district contract.¹ In addition, the second request seeks bid tabulations pertaining to the specified contract. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of fifteen third parties.² Accordingly, you state, and provide documentation demonstrating, the district notified these interested third parties of the request for information and of their right to submit arguments to this office as to why the

¹ You state, and provide documentation demonstrating, the district sought and received clarification of the information requested with respect to the second requestor. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² The third parties at issue are as follows: Apple Development Health; Avida Care Services; Cobb Pediatric Therapy Services; Cumberland Therapy Services; EBS Healthcare Inc. d/b/a Educational Based Services; Exceptional Pediatric Therapy; Gary D. Stromberg and Associates; Harris County Department of Education ("HCDE"); Invo Healthcare Associates; Maxim Healthcare Services; New Directions Solutions d/b/a Bilingual Therapies; Prime Healthcare Staffing; Specialized Assessment and Consulting; Therapia Staffing; and Therapy Staff.

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 HCDE. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the second request is broader than the first request because, in addition to pricing information, it also seeks bid tabulations pertaining to the specified contract. Thus, the district need not release information to the first requestor that is not responsive to her request.

Next, we note the district has not submitted information responsive to the portion of the second request seeking bid tabulations pertaining to the specified contract. To the extent any additional information responsive to that request existed on the date the district received the second request, we assume the district has already released it to the second requestor. 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).

Next, we note HCDE argues against the release of information the district has not submitted to this office for our review. This ruling does not address information that was not submitted by the district and is limited to the information the district has submitted for our review.³ *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 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, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the district has established the release of the submitted information would harm its interests by providing an advantage to a competitor or bidder in a particular competitive situation that is set to reoccur or for which the district has demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Accordingly, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.⁴

³ As we are able to make this determination, we need not address HCDE's arguments against disclosure of this information.

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

Ref: ID# 821674

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

c: 15 Third Parties
(w/o enclosures)