



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2022

Mr. Scott W. Thomas
Counsel for the Arlington Independent School District
Eichelbaum, Wardell, Hansen, Powell & Munoz, P.C.
5801 Tennyson Parkway, Suite 360
Plano, Texas 75024

OR2022-16161

Dear Mr. Thomas:

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# 951675 (PIA 275).

The Arlington Independent School District (the "district"), which you represent, received a request for information pertaining to a specified request for proposals. The district states it has released some of the requested information. The district claims the submitted information is subject to a previous ruling from our office. The district also claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the district states release of the submitted information may implicate the proprietary interests of Linebarger Goggan Blair & Sampson, L.L.P. ("Linebarger"), and Perdue Brandon Fielder Collins & Mott, L.L.P. ("Perdue"). Accordingly, the district states, and provides documentation showing, it notified these 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 and Perdue.¹ We have considered the submitted arguments and reviewed the submitted information.

¹ We note Perdue makes no arguments against disclosure of its information at issue and raises no exceptions to disclosure under the Act.

Initially, we note the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-03741 (2022). In that ruling, we determined the district must: (1) release the requested communications pursuant to section 552.302 of the Government Code because the district did not submit them for our review; (2) withhold the information we marked under section 552.1101 of the Government Code; (3) withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code; and (4) release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law. We assume the district released the information at issue. 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; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The district now seeks to withhold the submitted information, including any information that was previously released, under section 552.104 of the Government Code. However, section 552.104 does not prohibit the release of information or make information confidential. *See* Gov't Code § 552.104; *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the district may not now withhold any of the information previously ordered released in Open Records Letter No. 2022-03741 under section 552.104 of the Government Code. Nonetheless, we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the district must continue to rely on Open Records Letter No. 2022-03741 as a previous determination and withhold or release the information we have indicated in accordance with that ruling.² *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the remaining information was not previously requested and ruled on by this office, we will consider the district's argument against its disclosure.

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." 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, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the district has failed to demonstrate the

² As we are able to make this determination, we need not address Linebarger's arguments against disclosure.

applicability of section 552.104 to the information at issue. Thus, we conclude the district may not withhold any of the remaining information under section 552.104(a) of the Government Code.

In summary, the district must continue to rely on Open Records Letter No. 2022-03741 as a previous determination and withhold or release the information we have indicated in accordance with that ruling. 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/be

Ref: ID# 951675

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)