



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2022

Ms. Laura Rodriguez McLean
Counsel for the Wichita Falls Independent School District
Walsh Gallegos Trevino Kyle & Robinson, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR2022-30938

Dear Ms. McLean:

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# 973852.

The Wichita Falls Independent School District (the "district"), which you represent, received a request for information pertaining to a specified project.¹ You claim some of 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 Bartlett Cocke General Contractors, LLC ("Bartlett Cocke"). Accordingly, you state the district notified Bartlett Cocke 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 Bartlett Cocke. We have considered the submitted arguments and reviewed the submitted information.

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

¹ The district states, and provides documentation demonstrating, the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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 demonstrated the applicability of section 552.104 to the information at issue. Thus, we conclude the district may withhold the information you marked under section 552.104(a) of the Government Code.² Accordingly, 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/pt

Ref: ID# 973852

c: Requestor

Third Party

² As our ruling is dispositive, we need not address the argument of Bartlett Cocke against disclosure of the submitted information.