



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 13, 2022

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

OR2022-31531

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# 978042 (Ref. No. C072022).

The Houston Independent School District (the "district") received a request for three categories of information pertaining to 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 some of the information at issue may implicate the interests of third parties. Accordingly, you state, and provide documentation showing, the district notified these 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.¹ *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 exceptions in the Act in certain circumstances). We have received comments from Hunton, MAD, and ODP. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹ The notified third parties are as follows: Aberration Inc. d/b/a South Texas Solar Systems; Air Filters Inc.; Basestar Inc.; Best America LLC; Butler Business Products LLC; Carrier Corporation; Carrier Rental Systems; Competitive Choice; Complete Supply; Daikin Applied; Gateway Printing & Office Supply; Germsweep (Cromtec Cyber Solutions); Heat Transfer Solutions Inc.; Honeywell; HVAC Mechanical Services of Texas LTD d/b/a Hunton Services ("Hunton"); INVZBL LLC; Johnson Controls; Liberty Office Products; Medical Air Devices ("MAD"); Motive Wireless d/b/a Motive Lighting; Neutex Advanced Energy Group; Office Depot, LLC, k/n/a ODP Business Solutions ("ODP"); Pest Management Inc. (AuraBeat); Preferred Climate Solutions; Texas Air Systems; Troxell Communications; Unify Energy LLC; and WCNSM Enterprises LLC d/b/a Protect Ed.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

Section 552.104(a) of the Government Code exempts 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). After review of the information at issue and consideration of the arguments, we find you have established the release of the information at issue would harm the district’s interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.³

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,

Sarah E. Reese
Attorney
Open Records Division

SER/pt

Ref: ID# 978042

Enc. Submitted documents

c: Requestor
(w/o enclosures)

28 Third Parties
(w/o enclosures)

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³ As our ruling is dispositive, we need not consider the remaining arguments against disclosure of the submitted information.