



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2013

Ms. Priscilla Marquez  
Counsel for Ysleta Independent School District  
ScottHulse PC  
P.O. Box 99123  
El Paso, Texas 79999-9123

OR2013-07398

Dear Ms. Marquez:

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# 486513.

The Ysleta Independent School District (the "district"), which you represent, received a request for bids submitted in response to Bid No. 213038, Feasibility Study on Outsourcing Operation Administration, and written communications regarding the bids between district administration, trustees, or bidders.<sup>1</sup> You claim that the submitted information is excepted

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<sup>1</sup>You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

from disclosure under sections 552.104, 552.107, and 552.110 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information. You also state release of the submitted information may implicate the proprietary interest of Sodexo Services of Texas ("Sodexo"). Accordingly, you notified this third party of the request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from Sodexo. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991) (discussing statutory predecessor). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Section 552.104 does not except information from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You explain the district received a bid for Bid No. 213038, but a contract was never awarded. You further explain "the [d]istrict is currently in the process of finalizing a second solicitation which will have the same purpose as Bid No. 213038." You also state "[t]he new solicitation will seek the same general services, though some of the specs may vary slightly." You contend this is a re-bid situation and that release of the information at issue could jeopardize the bidding process, to the detriment of the district and the public. Based on your representations and our review, we conclude the district may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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.

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<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, although you raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to 552.022 of the Government Code is section 552.107 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 486513

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Karen L. Ehrlich  
Assistant General Counsel  
Sodexo Services  
9801 Washington Boulevard  
Gaithersburg, Maryland 20878  
(w/o enclosures)