



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 29, 2014

Ms. Ellen H. Spalding
Counsel for Eanes Independent School District
Rogers, Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2014-15249

Dear Ms. Spalding:

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# 536017.

The Eanes Independent School District (the "district"), which you represent, received a request for information pertaining to the lease of a specified property. The district claims the submitted information is excepted from disclosure under sections 552.104, 552.105, and 552.111 of the Government Code. The district also states, and provides documentation showing, it notified interested third parties of the district's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we note some of the information you have submitted to us for review is not responsive to the request for information because it was created after the district received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release this information in response to this request.

¹We 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 letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We next note the district has made some of the submitted information available to the public on its website. 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. *See* Gov't Code 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Although you assert this information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code, these exceptions are discretionary in nature and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Accordingly, the district may not withhold this information, which we have marked, under section 552.104 or 552.105 but, instead, must release it to the requestor.

You assert the remaining responsive information is excepted from disclosure under section 552.104 of the Government Code, which excepts from 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 a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* ORD 592 at 8 (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). Furthermore, section 552.104 does not apply when there is only a single individual or entity seeking a contract because there are no "competitors" for that contract. *See* Open Records Decision No. 331 at 2 (1982).

You inform us the responsive information pertains to property owned by the district that the district is attempting to lease. You state the district has received a number of bids for the property, but no winning bidder has been selected, no lease has been awarded, and the competitive bidding process was not complete when the district received the request. You also argue release of the information would give the bidders a competitive advantage over the district because they could tailor their terms and negotiations according to the bids submitted by other parties and the terms the district offered or rejected with their competitors. Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the remaining responsive information. Accordingly, the district may withhold the remaining responsive information under section 552.104 of the Government Code.²

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

To conclude, the district must provide to the requestor the information we have marked for release. The district may withhold the remaining responsive information under section 552.104 of the Government Code.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 536017

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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