



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2014

Mr. Joseph E. Hoffer
Counsel for the San Antonio School for Inquiry and Creativity
Shulman, Lopez & Hoffer, LLP
517 Soledad Street
San Antonio, Texas 78205-1508

OR2014-18533

Dear Mr. Hoffer:

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# 539500.

The San Antonio School for Inquiry and Creativity (the "school"), which you represent, received a request for completed score sheets that determined the winner of a contract for food services with the school and the submitted pricing. 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 submitted information may implicate the proprietary interests of a third party. Accordingly, you state you notified The Paper Plate, Inc. ("The Paper Plate") 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 The Paper Plate. We have reviewed the submitted arguments and the submitted information.

Section 552.104 of the Government Code 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 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). 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 information from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

The school raises section 552.104 of the Government Code for the submitted information. You state the submitted information consists of completed score sheets which include pricing information for the submitted proposals relating to the school’s existing contract for food services. However, you state the school must contract for food services each school year. You explain release of the submitted information would allow companies to alter pricing and would place the school at a disadvantage in obtaining fair bids for future food service contracts. Based on your representations and our review of the information at issue, we agree the school may withhold the submitted information under section 552.104 of the Government Code.¹

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

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 539500

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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For The Paper Plate, Inc.
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(w/o enclosures)