



February 3, 2015

Ms. Ashley Wilson
General Counsel
Dallas County Schools
612 North Zang Boulevard
Dallas, Texas 75208

OR2015-02131

Dear Ms. Wilson:

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# 552632 (DCS No. W000423-110614).

Dallas County Schools ("DCS") received a request for a copy of DCS E-Rate bid tabs for a specified time period. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties at issue of the request for information and of their 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 exception in the Act in certain circumstances). We have received comments from CenturyLink QCC. 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

¹The third parties at issue are: AT&T Corp., AT&T Mobility National Accounts, LLC; Skyriders Communications, Inc.; CenturyLink QCC ("CenturyLink"); Cogent Communications, Inc.; Netsync Network Solutions, INX, LLC; Sprint Solutions, Inc.; Time Warner Cable Enterprises, LLC; Cellco Partnership d/b/a Verizon Wireless; Zayo Group, LLC; and Qwest Communications Company, LLC.

§ 552.104(a). 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 pertaining to a completed bidding process for which a contract has been executed. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates 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 (1983) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You inform us you are advertising five Requests for Proposals (“RFPs”) for E-Rate services for the 2015-2016 school year, per competitive purchasing requirements. You state an E-Rate vendor has not been chosen yet and no E-Rate contracts have been entered into for the 2015-2016 school year. You assert “release of last year’s bid tabs, which contain information on pricing and specific services offered, would harm DCS by allowing responders to accurately estimate and undercut their bids in the current and future E-Rate RFPs.” You state release of the information at issue may cause “current responders to raise their prices and offer fewer services than they otherwise would have based on review of what others offered last year.” Based on your representations and our review, we conclude you have demonstrated the applicability of section 552.104 to the information at issue. Thus, we find DCS may withhold the submitted information under section 552.104 of the Government Code.²

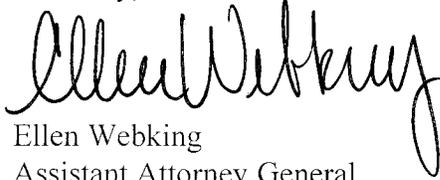
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²As our ruling is dispositive, we need not address the arguments against disclosure submitted by CenturyLink.

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

Sincerely,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 552632

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Kevin K. Zarling
Associate General Counsel
CenturyLink
400 West 15th Street, Suite 315
Austin, Texas 78701
(w/o enclosures)

Mr. Matthew Phillips
AT&T Mobility National Accounts
7229 Parkway Drive
Hanover, Maryland 20176
(w/o enclosures)

Mr. Kenneth Robbins
AT&T Corp.
311 South Akard Street
Dallas, Texas 75202
(w/o enclosures)

Ms. Laramie Mergerson
Cellco Partnership d/b/a Verizon Wireless
One Verizon Way
Basking Ridge, New Jersey 07920
(w/o enclosures)

Ms. Stacy Baxter
Cogent Communications, Inc.
1015 31st Street, NW
Washington, DC 20007
(w/o enclosures)

Mr. Ash Warren
INX, LLC/Presidio Network Solutions, Inc.
1955 Lakeway Drive, Suite 220
Lewisville, Texas 75057
(w/o enclosures)

Mr. Mike Hymer
Qwest Communications Company d/b/a CenturyLink
1801 California Street
Denver, Colorado 80202
(w/o enclosures)

Mr. Brad Warden
Skyrider Communications
1200 Arkansas Road
West Monroe, Louisiana 71291
(w/o enclosures)

Ms. Karen Kezele
Sprint Solutions, Inc.
6200 Sprint Parkway
Overland Park, Kansas 66251
(w/o enclosures)

Mr. Bill Burton
Zayo Group, LLC
400 Centennial Parkway, Suite 200
Louisville, Colorado 80027
(w/o enclosures)