



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2015

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

OR2015-10597

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# 565684.

The Eanes Independent School District (the "district"), which you represent, received a request for offers to purchase and communications regarding two specified properties. You state you are releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, 552.107, and 552.111 of the Government Code.¹ 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

¹Although the district raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.²

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(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 bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the properties at issue are owned by the district and the district submitted both the sale and lease of the properties for public bidding. You state the district has received a number of bids for the properties, but no winning bidder has been selected, no lease or purchase documents have 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 submitted information. Accordingly, the district may withhold the submitted information under section 552.104 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.

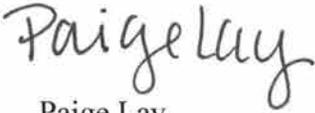
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²We 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.

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

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 cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 565684

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Parties
(w/o enclosures)