



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 12, 2015

Mr. Miles J. LeBlanc  
Assistant General Counsel  
Houston Independent School District  
440 West 18<sup>th</sup> Street  
Houston, Texas 77092-8501

OR2015-11629

Dear Mr. LeBlanc:

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# 567149 (HISD Ref. No. HC031215C).

The Houston Independent School District (the "district") received a request for scoring sheets generated in response to a specified project. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim 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(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) (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). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See id.* at 5. 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 same or similar goods or services on a recurring basis. *See id.* (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 such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis). *But see* ORD 541 at 5 (construing statutory predecessor and noting duration of coal transportation contract and unique services provided under contract make it highly unlikely the governmental body at issue would solicit coal transportation services again in near future).

You state, “[i]n a rebid situation,” release of the submitted information “could unfairly give some firms a competitive advantage over others and therefore diminish the [d]istrict’s ability to procure the highest quality professional services and to negotiate the most competitive contract.” However, the submitted documentation indicates the bid has been awarded by the district and the contract has been finalized and executed. Additionally, you do not inform us the information at issue relates to a specific rebid or recurring contract. Upon review, we find you have not demonstrated how release of the submitted information will harm the district’s interest in a particular competitive situation. Accordingly, the district may not withhold any of the submitted information under section 552.104 of the Government Code. As you raise no further exceptions to disclosure, the submitted information must be released.

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](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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 567149

Enc. Submitted documents

c: Requestor  
(w/o enclosures)