



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2015

Ms. Amanda Davis
Legal Administrator
Dallas County Schools
612 North Zang Boulevard
Dallas, Texas 75208

OR2015-14392

Dear Ms. Davis:

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# 571873 (DCS Ref. No. W000473-032315).

Dallas County Schools ("DCS") received a request for information pertaining to DCS's School Bus Safety/Stop Arm program, including contracts.¹ DCS states it is withholding some of the requested information in accordance with Open Records Letter No. 2014-21161A (2014). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). DCS also states it will provide some of the requested information to the requestor. DCS claims some of the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. DCS does not take a position as to whether the remaining information is excepted from disclosure under the Act. However, DCS states, and provides documentation showing, it notified Force Multiplier Solutions, Inc. ("FMS") of DCS's receipt of the request for information and of FMS's 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)

¹DCS sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

(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 information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264 , at * 9 (Tex. June 19, 2015). DCS indicates it has specific marketplace interests in the information it has marked under section 552.104 because it is competing against other stop-arm programs. In addition, DCS states the information at issue reveals its pricing methodology, includes information about its customers and prospective customers, and details the strengths and weaknesses of its business plan. DCS argues release of the information at issue would allow competitors “to detract from DCS’s competitive edge.” DCS also informs us many of the school districts to which it is marketing have not awarded a contract, and bidding is ongoing. After review of the information at issue and consideration of the arguments, we find DCS has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude DCS may withhold the information it has marked under section 552.104 of the Government Code.²

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, FMS has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the remaining information constitutes proprietary information of that third party, and DCS may not withhold any portion of it on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

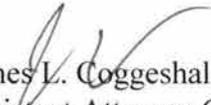
To conclude, DCS may withhold the information it has marked under section 552.104 of the Government Code. DCS must release the remaining information to the requestor.

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.

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

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/cbz

Ref: ID# 571873

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)