



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 19, 2015

Ms. Patricia Guidry, ARM  
Director of Risk Management  
Aldine Independent School District  
14910 Aldine-Westfield Road  
Houston, Texas 77032-3099

OR2015-24349

Dear Ms. Guidry:

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# 588520.

The Aldine Independent School District (the "district") received a request for a specified contract, proposal, and other information pertaining to a request for proposals by the district. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state you do not have possession of certain information responsive to a portion of the request.<sup>1</sup> You state release of the submitted information may implicate the proprietary interest of Express Scripts, Inc. ("Express Scripts"). Accordingly, you state you notified this party of the request for information and of its right to submit arguments to this office as to why the information at issue 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

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<sup>1</sup>The Act does not require a governmental body to prepare new information in response to a request or obtain information that is not held by the governmental body or on its behalf. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2(1990), 452 at 3 (1986), 362 at 2 (1983).

explain applicability of exception in the Act in certain circumstances). We have received comments from Express Scripts. We have considered the submitted arguments 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 [competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the information pertains to a competitive bidding situation. You explain that the submitted contract “continues to be negotiated and has not fully been executed” and that the release would harm the district. You further state that if the contract negotiations with Express Scripts fail, the district may have to issue a new request for proposals, and the release of the submitted information may give an unfair advantage to the bidders. After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a).<sup>2</sup>

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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/sb

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure.

Ref: ID# 588520

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Melissa J. Copeland  
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(w/o enclosures)