



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2016

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2016-07107

Dear Ms. Ellison:

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# 604331 (File No. Callahan C101615).

The Houston Independent School District (the "district") received a request for the executed contract and statements of qualifications from Muñoz & Company ("Muñoz") and VLK Architects, Inc. ("VLK Architects") with regard to a specified request for qualifications.¹ You state the district will release some responsive information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Muñoz and VLK Architects. Accordingly, you state, and provide documentation showing, you notified these third parties 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. *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

¹We note the requestor amended the request for information. *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). You also inform us the requestor paid a deposit pursuant to section 552.263 of the Government Code on January 8, 2016. *See* Gov't Code § 552.263(e) (request considered received on date governmental body receives required deposit).

exception in the Act in certain circumstances). We have received comments from Muñoz. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from VLK Architects explaining why its information should not be released. Therefore, we have no basis to conclude VLK Architects has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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. Accordingly, the district may not withhold any of the information at issue on the basis of any proprietary interest VLK Architects may have in it.

Muñoz asserts some of its information is protected under section 552.104(a) of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831, 839 (Tex. 2015). 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." *Id.* at 841. Muñoz states it has competitors. In addition, Muñoz states the information at issue offers "insight into how Muñoz assembles a network of contractors that appeal to school districts" and "the number and size of projects for which Muñoz would and would not qualify for financially." After review of the information at issue and consideration of the arguments, we find Muñoz 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 information we have indicated under section 552.104(a) of the Government Code.²

We note some of the remaining information is subject to section 552.136 of the Government Code.³ Section 552.136 of the Government Code states "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Upon review, we find the

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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

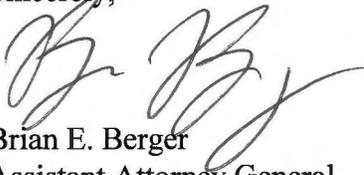
district must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the district may withhold the information we have indicated under section 552.104(a) of the Government Code. The district must withhold the information we have marked under section 552.136 of the Government Code. The remaining 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, 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 604331

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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