



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2016

Mr. Allen M. Keller
Counsel for North East Independent School District
Schulman, Lopez, Hoffer & Adelstein LLP
517 Soledad Street
San Antonio, Texas 78205

OR2016-19879

Dear Mr. Keller:

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# 625247.

The North East Independent School District (the "district"), which you represent, received a request for all bid responses to a specific request for proposal. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of AT&T, Inc. ("AT&T"), NextEra FiberNet, LLC ("FPL"), Time Warner Cable Business Class ("Time Warner") and Windstream Services, LLC ("Windstream"). You state you have released the requestor's bid response. Accordingly, you state, and provide documentation showing, you notified AT&T, FPL, Time Warner, and Windstream 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 exception in the Act in certain circumstances). We have considered the exception you claim 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*, 466 S.W.3d 831 (Tex. 2015). You represent the submitted information pertains to a competitive bidding situation. You state the district has a perpetual need to secure contracts for Internet access services, and the district solicits bids for internet access services every few years. In addition, you state release of the submitted information would allow competitors to accurately estimate and undercut future bids. Based on your representations and our review, we find the district has established release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 625247

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)