



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 13, 2016

Ms. Sarah W. Langlois
Counsel for Harris County Department of Education
Rogers Morris & Grover
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2016-20602

Dear Ms. Langlois:

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# 626209.

The Harris County Department of Education (the "department"), which you represent, received a request for information pertaining to the department and a specified entity.¹ You state you have no information responsive to a portion of the request.² You also state you released some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the interests of Harmony Public Schools ("Harmony"). Accordingly, you state, and provide documentation showing, you notified Harmony of the request for information and

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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).

of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from Harmony and the requestor's attorney.³ *See id.* We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us a portion of the request requires the department to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the department has made a good faith effort to locate any information responsive to this request. Accordingly, we will address Harmony's claimed exception for 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). Harmony states it "operates open-enrollment charter schools throughout the State of Texas." Pursuant to these operations, Harmony explains it entered into an agreement with the department in "which the [department] agreed to provide procurement consulting services to Harmony, including . . . the review and evaluation of proposals submitted by vendors to Harmony." Accordingly, Harmony states the information at issue pertains to a competitive bidding situation. It explains the information at issue consists of scoring and evaluation criteria that relate to contracts that have been awarded and executed. However, Harmony states it "solicits proposals for each of the services discussed in the [submitted information] on a recurring" basis. Harmony asserts the disclosure of the information at issue will allow vendors "to prepare bids that would undercut those prepared by other vendors in response to future requests for proposals from [Harmony], thereby gaining an unfair competitive advantage over other potential vendors." After review of the information at issue and consideration of the arguments, we find Harmony has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold the information Harmony indicated under section 552.104(a) of the Government Code. The department must release the remaining information.

³Although the requestor's attorney asserts Harmony failed to comply with section 552.305(e), we note this provision applies to third parties notified under section 552.305(d), which in this case is not Harmony. *See* Gov't Code § 552.305.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 626209

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)