



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2009

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2009-00857

Dear Ms. McGowan:

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# 332704.

The Dallas Independent School District (the "district") received a request for information pertaining to the system that checks the driver's licenses of visitors and employees who have forgotten their identification when entering district campuses. You state the district has released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code and you state that release of the submitted information implicates the interests of a third party. You state, and provide documentation showing, the district notified the third party, Raptor Technologies, Inc. ("Raptor"), of this request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your arguments and reviewed the submitted information.

We note that an interested third party is allowed ten business days from the date of its receipt of a governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See*

Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any arguments from Raptor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate its proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Thus, the district may not withhold any of the submitted information based on any proprietary interests that Raptor may have in the information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations, including where the governmental body may wish to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 at 8 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a bidder will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). However, section 552.104 does not except from disclosure information relating to competitive bidding situations once a contract has been executed. Open Records Decision Nos. 306 (1982), 184 (1978).

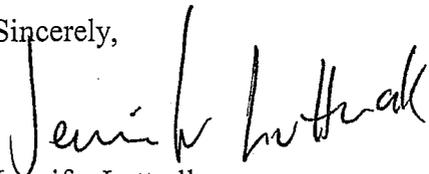
You state that the information at issue was submitted in response to a request for proposals to provide the district with a district-wide visitor system. You state that the district has not yet awarded a contract to provide this system. You argue that release of the submitted information could negatively impact the competitive process and indicate release would harm the district's interests. Based on these representations and our review, we conclude that the district may withhold the submitted information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to the public interest in the contract under negotiation).

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 332704

Enc. Submitted documents

c: Requestor
(w/o enclosures)