



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

Ms. LeAnne Lundy
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road Suite 1200
Houston, Texas 77057

OR2010-13997

Dear Ms. Lundy:

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# 393439.

The Eanes Independent School District (the "district"), which you represent, received a request for information pertaining to a specified request for proposals. You state you have released some of the requested information and that some of the requested information does not exist.¹ 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 third parties. Accordingly, pursuant to section 552.305 of the Government Code, you notified Alpha Media, School Bus Ads of Texas, L.L.C., and Steep Creek Media ("Steep Creek") of the request and of their right to submit arguments to this office as to why their information should not be released. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have received comments from Steep Creek. We have considered the submitted arguments and reviewed the submitted information.²

Section 552.104 of the Government Code excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

You state the district's administration has recommended Steep Creek for approval to the district's Board of Trustees, but that no contract has been executed and negotiations are currently ongoing. You explain that because the contract has not been executed, release of the submitted information at this time would place the district at a disadvantage in obtaining a fair contract should the initial negotiations fail. Based on your representations and our review, we determine the district has demonstrated that release of the submitted information would harm its interests in a competitive situation. Accordingly, the district may withhold the submitted information under section 552.104 of the Government Code until the contract is executed.³

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

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address the remaining arguments against disclosure.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 393439

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Mr. Michael Beauchamp
Alpha Media
25 Highland Park Village, Suite 100-823
Dallas, Texas 75205
(w/o enclosures)

Mr. Dooley Ann Navarro
School Bus Ads of Texas, LLC
P.O. Box 16134
Austin, Texas 78716
(w/o enclosures)

Ms. Cynthia Calvert
Steep Creek Media
18525 West Lake Houston Parkway, Suite 102
Humble, Texas 77346
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