



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2010

Ms. Meridith L. Hayes  
Attorney for Northwest Independent School District  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2010-14782

Dear Ms. Hayes:

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# 395120.

The Northwest Independent School District (the "district"), which you represent, received a request for a list of the bidders, the evaluation sheets, the winning bid, and a copy of the contract related to RFCSP #B010011-0309 for the construction of Sendera East Elementary School. You indicate that a final contract does not exist.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. Additionally, you state that release of this information may implicate the proprietary interests of a third party, Cadence McShane Construction ("Cadence McShane"). Accordingly, you inform us, and provide documentation showing, that you notified Cadence McShane of the request and of its right to submit arguments to this office as to why its information should not be released. See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 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 the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

The district raises section 552.104 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). The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* 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 inform us the submitted information pertains to a request for proposals where the bidding process has concluded. You also state that the district and Cadence McShane, the winning bidder, have not executed the contract. Thus, you contend that the release of the submitted information could still harm the district's ability to compete for the best bid and terms for its architectural contracts. Having considered your arguments, we find you have demonstrated that section 552.104 is applicable to the submitted information. Therefore, we conclude the district may withhold the submitted information under section 552.104 of the Government Code.<sup>2</sup>

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](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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/eb

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against the disclosure of a portion of the submitted information.

Ref: ID# 395120

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Neal L. Harper  
President  
Cadence McShane Construction  
14860 Montfort Drive, Suite 270  
Dallas, Texas 75254  
(w/o enclosures)