



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2010

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

OR2010-16416

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# 398424.

The Eanes Independent School District (the "district"), which you represent, received a request for the district's Request for Proposals, subsequent agreement, contract, and other related documents and materials for the sale of advertising on the sides of district school buses. You state the district will release the Request for Proposals. You further state you do not have information responsive to the request for the contract or agreement.¹ You claim the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code.² 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; Metro Outdoor of Austin, L.L.C.; 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

¹The 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).

²We note although you raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.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 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.³

Initially, you inform us that a portion of the information submitted as Exhibit C was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-13997 (2010). In Open Records Letter No. 2010-13997, we determined the district may withhold the submitted information under section 552.104 of the Government Code until a contract is executed. You contend there has not been any change in the law, facts, or circumstances on which the previous ruling was based. Thus, with regard to the information in Exhibit C that is identical to the information previously requested and ruled on by this office, we conclude the district may continue to rely on Open Records Letter No. 2010-13997 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, we will address the submitted arguments for the remaining portion of Exhibit C and the entirety of Exhibit D, which are not subject to the previous determination.

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).

³We 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.

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 a contract has not been executed, release of the remaining submitted information at this time would place the district at a disadvantage in obtaining a fair contract with Steep Creek. You also explain that release of this information would place the district at a disadvantage in future negotiations with other vendors, if a contract cannot be negotiated with Steep Creek. Based on your representations and our review, we determine the district has demonstrated that release of the remaining submitted information would harm its interests in a competitive situation. Accordingly, the district may withhold the remaining submitted information in Exhibits C and D under section 552.104 of the Government Code until a contract is executed.⁴

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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 398424

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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

Mr. Michael Morrill
Metro Outdoor of Austin, LLC
P.O. Box 78716
Austin, Texas 78716
(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
(w/o enclosures)