



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2011

Ms. LeAnne Lundy
Rogers, Morris & Grover, L.L.P.
For Eanes Independent School District
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2011-01485

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# 407335.

The Eanes Independent School District (the "district"), which you represent, received a request for (1) a contract entered into by the district for advertising on school buses, (2) the request for proposals ("RFP") and subsequent agreement that was executed with the district, and (3) any other documents related to the contract or RFP. You state that in response to a previous request for the same information, the district released the RFP and the documents the requestor submitted in response to the RFP. *See* Gov't Code § 552.232 (prescribing procedures for responding to repetitious or redundant requests for information). You further state you do not maintain information responsive to the request for the contract or agreement.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.107, and 552.111 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; 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 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

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).

explain applicability of exception to disclosure under Act in certain circumstances). We have received comments from Steep Creek. We have also received comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, you inform us that the information submitted as Exhibit E was previously the subject of an identical request for information from the same requestor. In Open Records Letter No. 2010-16416 (2010), we determined the district may withhold the information submitted as Exhibit E under section 552.104 of the Government Code until a contract is executed. As to this information, you state there has been no change in the law, facts, or circumstances on which the previous ruling was based. Thus, with regard to the information submitted as Exhibit E, we conclude the district may continue to rely on Open Records Letter No. 2010-16416 as a previous determination and withhold the 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). You inform us, however, the information submitted as Exhibit D was created subsequent to our ruling in Open Records Letter No. 2010-16416. Accordingly, we will consider the applicability of the claimed exceptions to the information submitted as Exhibit D.

We note that some of the information you have submitted in Exhibit D is not responsive to the request at issue. The requestor seeks information relating to a specified RFP and contract. Some of the information you have submitted consists of correspondence relating to the requestor's previous request for this information and our ruling. Thus, this information is not responsive to the request. This ruling does not address the public availability of that information, and the district need not release any non-responsive information.

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

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.

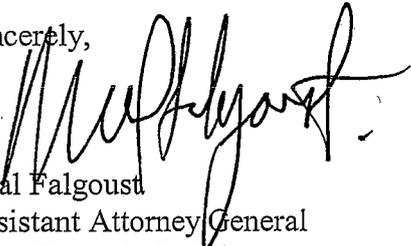
except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990).

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 ongoing.³ 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 find the district has demonstrated that release of the responsive information would harm its interests in a competitive situation. Accordingly, the district may withhold the responsive information in Exhibit D under section 552.104 of the Government Code.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

³We note the requestor disputes the district's representation that the contract has not been signed. However, this office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990).

⁴As our ruling is dispositive, we do not address your remaining arguments against disclosure.

Ref: ID# 407335

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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