



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2014

Ms. Katheryne Ellison
Assistant General Counsel
Public Information Office
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2014-11510

Dear Ms. Ellison:

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# 528224 (District ID T041414).

The Houston Independent School District (the "district") received a request for the rubric scale used in a specified request for proposals, the winning bid proposal submitted by Catapult Learning West, L.L.C. ("Catapult"), and Catapult's rubric score. You claim some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, although you take no position as to whether the remaining information is excepted under the Act you state release of this information may implicate the proprietary interests of Catapult. Accordingly, you state, and provide documentation showing, you notified Catapult of the request for information and of its right to submit arguments to this office as to why the remaining information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Catapult explaining why the information in Exhibit 4 should not be released. Therefore, we have no

basis to conclude Catapult has a protected proprietary interest in the information at issue. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the district may not withhold the information in Exhibit 4 on the basis of any proprietary interest Catapult 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) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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 has awarded the contract to a vendor, but has not executed a final contract with such vendor. You state the release of the information in Exhibit 2 before the execution of the final contract would interfere with the district’s bargaining position and diminish the district’s ability to procure the highest quality goods and services and to negotiate the most competitive contract. Based on these representations and our review, we conclude the district has demonstrated release of the information at issue could harm its interests with respect to this project. Thus, the district may withhold the information in Exhibit 2 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 expense of others and could be detrimental to public interest in contract under negotiation).

We note some of the remaining information is subject to section 552.136 of the Government Code, which provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

In summary, the district may withhold the information in Exhibit 2 under section 552.104 of the Government Code until such time as a contract has been executed. The district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The district must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 528224

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Annette Charles
Catapult Learning West
532 Edgebrook Avenue
Keller, Texas 76248
(w/o enclosures)