



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2016

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

OR2016-24300

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# 632532 (File No. McGalloway M081516).

The Houston Independent School District (the "district") received a request for information pertaining to a specified request for proposals, including evaluations, presentations, scoring tabulations and comments, and best and final offers made. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also state release of some of the submitted information may implicate the interests of AXA Equitable Life Insurance Company; First Financial Securities of America, Inc.; GLP & Associates, Inc.; PlanMember Services; and The Variable Annuity Life Insurance Company ("VALIC"). Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from VALIC. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter

No. 2016-20624 (2016). In Open Records Letter No. 2016-20624, we concluded the district may withhold the submitted information under section 552.104(a) of the Government Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude the district may continue to rely on Open Records Letter No. 2016-20624 as a previous determination and withhold the identical 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). To the extent the submitted information is not encompassed by the previous ruling, we will address the arguments against its release.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the remaining information pertains to a competitive bidding situation in which vendors have been selected, but contracts with the vendors have not been executed and negotiations regarding the contracts are ongoing. In addition, you contend release of the information at issue would interfere with the district’s bargaining position and allow “future bidders for the same services to determine the lowest level of services that might suffice to win an award or otherwise interfere with ongoing negotiations regarding pricing or other costs.” After review of the information at issue and consideration of the arguments, we find the district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the remaining information under section 552.104(a) of the Government Code.¹

In summary, for the submitted information that is identical to the information previously requested and ruled upon by this office, the district may continue to rely on Open Records Letter No. 2016-20624 as a previous determination and withhold the identical information in accordance with that ruling. The district may withhold the remaining information under section 552.104(a) of the Government Code.

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.

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/akg

Ref: ID# 632532

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)