

Office of the Attorney General
State of Texas
Informal Letter Ruling No. OR2017-28910
December 20, 2017

Mr. Allen M. Keller
Counsel for KIPP San Antonio
Schulman, Lopez, Hoffer & Adelstein, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

Dear Mr. Keller:

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# 691323.

KIPP San Antonio ("KIPP"), which you represent, received a request for information pertaining to a specified contract.¹ KIPP claims the requested information is excepted from disclosure under [section 552.104 of the Government Code](#). KIPP also states, and provides documentation showing, KIPP notified Assessment, Intervention & Management, L.L.C. of KIPP's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. See [Gov't Code § 552.305\(d\)](#); see also Open Records Decision No. 542 at 3 (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 claimed exception and reviewed the submitted information.

[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). KIPP informs us the submitted information relates to a contract for services that has been awarded and executed. However, KIPP explains it seeks bids for these services on a recurring basis, and asserts release of the information at issue would provide a competitive advantage to bidders in future bids for those services. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. [Gov't Code § 552.022\(a\)\(3\)](#) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). See generally Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to the *Boeing* decision, [section 552.104](#) is not limited to only ongoing competitive situations, and it need only be shown release of competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. Upon review, we find KIPP has established the release of the submitted information would give advantage to a competitor or bidder. Thus, we conclude KIPP may withhold the submitted 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.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

Footnotes

- ¹ KIPP sought and received clarification of the information requested. See [Gov't Code § 552.222](#) (if request for information is unclear, governmental body may ask requestor to clarify request); see also [City of Dallas v. Abbott, 304 S.W.3d 380, 387 \(Tex. 2010\)](#) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).