



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2013

Mr. Robert Viña III
Counsel for South Texas Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
105 East 3rd Street
Weslaco, Texas 78596

OR2013-13281

Dear Mr. Viña:

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# 495076.

The South Texas Independent School District (the "district"), which you represent, received a request for four categories of information relating to E-Rate internet access for the 2013-2014 fiscal year. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.136, and 552.137 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of third parties.¹ You state, and provide documentation showing, you notified the third parties 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 explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

¹The notified third parties are: Cyberschool; Edlio; Foxbright; Gaggle; Innersync Studio; Network Services; Region One Education Service Center; School in Sites; Sharp School; SmartCom; SOCS; Sprint; Telespiron USA, L.L.C.; Verizon; and WINSTREAM.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from any of the third parties. Thus, the third parties have not demonstrated the companies have protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)-(b); 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, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interests any of the third parties may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, the doctrine of common-law privacy protects the privacy interests of individuals, not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Upon review, we find none of the submitted information is highly intimate or embarrassing information pertaining to an individual and is not of legitimate concern to the public. Therefore, the submitted information is not confidential under common-law privacy, and the district may not withhold it from release under section 552.101 on that ground.

Section 552.104 of the Government Code excepts from required public 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 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) (discussing statutory predecessor). 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 information from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in Open Records Decision No. 541, this office stated that the predecessor to section 552.104 may protect information after bidding is complete if the governmental body demonstrates that public disclosure of the information will allow competitors to undercut future bids, and the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids); *see also* Open Records Decision No. 309 (1982) (suggesting that such principle will apply when governmental body solicits bids for same or similar goods or services on recurring basis).

You inform us the submitted proposals relate to a contract to provide internet access service to the district where the district has awarded the bid. You state the district will solicit bids for the same services “on a regular basis” and you inform us that “[t]his type of contract is not a one-time contract which the district would be unlikely to enter into again with an internet access service provider.” Upon review, however, we find you have failed to establish that release of the submitted information would cause potential harm to the district’s interests in upcoming competitive bidding situations. Accordingly, the district may not withhold the submitted information under section 552.104.

The district raises section 552.110 of the Government Code for the submitted information. We note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district’s arguments under section 552.110 of the Government Code.

Section 552.136 of the Government Code states “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find none of the submitted information consists of access device numbers for the purposes of section 552.136 of the Government Code. Accordingly, none of the submitted information may be withheld on that basis.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). However,

section 552.137 does not except from release an e-mail address “contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]” *See id.* § 552.137(c)(3). The e-mail addresses you seek to withhold in the submitted information are subject to section 552.137(c)(3). Therefore, the district may not withhold any of the submitted information under section 552.137. *See id.* § 552.137(a).

We note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As no other exceptions to disclosure have been raised, the submitted information must be released, but any information protected by copyright may only be released in accordance with copyright law.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 495076

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Mario Hernandez
Cyberschool
Suite 108
5401 Business Park South
Bakersfield, California 93309
(w/o enclosures)

Mr. Mike Alfultis
Regional Sales Manager
Edlio
114 West 7th Street, Suite 750
Austin, Texas 78701
(w/o enclosures)

Ms. Paula Whisman
Customer Service
Foxbright
Suite 511
161 Ottawa Avenue NW
Grand Rapids, Michigan 49503
(w/o enclosures)

Mr. Shawn Baker
Regional Relationship Manager
Gaggle
P.O. Box 1352
Bloomington, Illinois 61702
(w/o enclosures)

Mr. Jeff Lucas
Innersync Studio
26 East 9th Street
Newport, Kentucky 41701
(w/o enclosures)

Ms. Joy Crofoot
Account Executive
Network Services
10631 Professional Circle, Suite B
Reno, Nevada 89521
(w/o enclosures)

Mr. Daniel Rebollar
IT Project Manager
Region One Education Service Ctr.
1900 West Schunior
Edinburg, Texas 78541
(w/o enclosures)

Mr. Skip Platt
School in Sites
P.O. Box 306
Saraland, Alabama 36571
(w/o enclosures)

Ms. Jennifer Tyrrell
Legal Counsel
Sharp School
P.O. Box 1608
Williamsville, New York 14221
(w/o enclosures)

Mr. Robert Sanchez
K12 & Government Account Specialist
SmartCom
600 Ash Avenue
McAllen, Texas 78501
(w/o enclosures)

R. S. Ashton
Authorized Signer
Telspirion USA, L.L.C.
P.O. Box 57
McAllen, Texas 78505-0057
(w/o enclosures)

Mr. Omar Rodriguez
Government Account Executive
Verizon
2107 South 10th Street
McAllen, Texas 78503
(w/o enclosures)

Mr. Neil Siedschlag
Account Executive I
WINSTREAM
Suite 240
106 South Saint Mary's Street
San Antonio, Texas 78205
(w/o enclosures)

Mr. Dan Kunzman
Vice President
SOCS
c/o Mr. Robert Viña III
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
105 East 3rd Street
Weslaco, Texas 78596
(w/o enclosures)

Mr. Robert Hahn
Public Sector Account Manager
Sprint
c/o Mr. Robert Viña III
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
105 East 3rd Street
Weslaco, Texas 78596
(w/o enclosures)