



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2014

Ms. Patricia Guidry  
Director of Risk Management  
Aldine Independent School District  
14910 Aldine-Westfield Road  
Houston, Texas 77032-3099

OR2014-18720

Dear Ms. Guidry:

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# 539758.

The Aldine Independent School District (the "district") received a request for all submitted RFP responses for the Enterprise Level Learning Management System. You state you will release some of the information to the requestor. Although you take no position as to whether the requested information is excepted by the Act, you state release of the requested information may implicate the proprietary interests of certain third parties, namely: Atlas, Blackboard, Canvas, Desire2Learn ("D2L"), Haiku Learning ("Haiku"), Lightspeed Systems ("Lightspeed"), Follet, Loudcloud Systems, Engrade, and Schoology. Accordingly, you state, and provide documentation showing, you notified these third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Lightspeed, Engrade, D2L, and Schoology. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental

body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). In this instance, the district received the request for information on July 24, 2014. Accordingly, the ten-business-day deadline under section 552.301(b) was August 7, 2014. However, the district requested a ruling from our office in an envelope meter-marked August 11, 2014. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the district failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because third-party interests can provide a compelling reason for non-disclosure, we will consider the applicability of the arguments submitted by D2L, Schoology, Engrade, and Lightspeed.

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 Atlas, Blackboard, Canvas, Haiku, Follet, or Loudcloud Systems explaining why the requested information should not be released. Therefore, we have no basis to conclude they have a protected proprietary interest in the requested information. *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, 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 Atlas, Blackboard, Canvas, Haiku, Follet, or Loudcloud Systems may have in the information.

We note Engrade objects to disclosure of information the district has not submitted to this office for review. This ruling does not address information that was not submitted by the district and is limited to the information submitted as responsive by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Lightspeed, Schoology, and D2L claim portions of their information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5.

Lightspeed, Schoology, and D2L contend portions of their information are commercial or financial information, the release of which would cause substantial competitive harm. Additionally, D2L contends its customer information is commercial or financial information, the release of which would cause substantial competitive harm to the company. Upon review, we find Lightspeed and D2L have demonstrated some of their information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the district must withhold this information, which we have marked, under section 552.110(b) of the Government Code. Additionally, we find D2L has demonstrated its customer information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, to the extent D2L’s customer information is not publicly available on its website, the district must withhold D2L’s customer information under section 552.110(b). However, we find Lightspeed, Schoology and D2L have failed to demonstrate that the release of any of their remaining information would result in substantial harm to their competitive positions. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110), 175 at 4 (1977) (resumes cannot be said to fall within any exception to the Act). Accordingly, none of their remaining information may be withheld under section 552.110(b).

We note the submitted information contains insurance policy numbers. Section 552.136 of the Government Code 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.”<sup>1</sup> Gov’t Code § 552.136(b); *see*

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

*id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Thus, the district must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

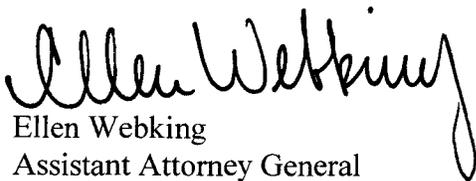
We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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.

In summary, the district must withhold the information we have marked and D2L’s customer information, to the extent the customer information is not publicly available on D2L’s website, under section 552.110(b) of the Government Code. The district must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The remaining information must be released; however, any information subject to copyright may be released only 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/ds

Ref: ID# 539758

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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Mr. Jamar Boyd  
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