



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2014

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204

OR2014-20457

Dear Ms. McGowan:

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# 542654 (ORR#s 13298 and 13350).

The Dallas Independent School District (the "district") received two requests for the scoring and evaluation documents and winning proposal for RFP #OA-204181. You inform us, and submit documentation which demonstrates, the second requestor withdrew her request for information; thus, you state the district is withdrawing its request for a ruling as to the second request. You state the district will release some of the requested information to the first requestor pending the first requestor's response to an itemized cost statement. We understand the district takes no position with respect to the remaining requested information, but you state its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the district notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.<sup>1</sup> 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

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<sup>1</sup>The third parties notified pursuant to section 552.305 are the following: Amplify Education, Inc. ("Amplify"); Casenex, LLC ("Casenex"); Imagination Station, Inc. d/b/a IStation ("IStation"); and NCS Pearson, Inc. ("Pearson").

exception in certain circumstances). We have reviewed the submitted information and the correspondence submitted by Amplify, IStation, and Pearson.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). Pearson informs our office it does not object to the disclosure of its information. As of the date of this letter, this office has not received comments from Casenex explaining why its information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the interests of Casenex or Pearson, and none of the submitted information may be withheld on that basis. *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.

Next, IStation seeks to withhold information the district did not submit for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Amplify and IStation both raise section 552.110(b) of the Government Code.<sup>2</sup> 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.*; ORD 661 at 5-6.

Amplify contends its customer information is commercial or financial information, release of which would cause substantial competitive harm to Amplify. Upon review of Amplify's arguments under section 552.110(b), we conclude it has established the release of its customer information would cause it substantial competitive injury. Accordingly, to the extent Amplify's customer information is not publicly available on the company's website, the district must withhold Amplify's customer information under section 552.110(b). To the extent Amplify's customer information is publicly available on the company's website, the district may not withhold such information under section 552.110(b). IStation contends release of portions of its information are commercial or financial information, release of

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<sup>2</sup>Although Amplify does not specifically cite to section 552.110(b), we understand it to raise this section based on the substance of its arguments.

which would cause the company substantial competitive harm. Upon review, we conclude IStation has established the release of some of its information at issue, which we have marked and includes customer information, would cause it substantial competitive injury. To the extent IStation's customer information is not publicly available on the company's website, the district must withhold IStation's customer information we have marked under section 552.110(b). To the extent IStation's customer information is publicly available on the company's website, the district may not withhold such information under section 552.110(b). The district must also withhold IStation's information we have marked that does not pertain to customers under section 552.110(b). However, we find IStation has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of IStation's remaining information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude the district may not withhold the remaining information at issue under section 552.110(b).

We note portions of the remaining information are subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136.

Amplify contends its information is subject to copyright law and we note some of the remaining information pertaining to other third parties is subject to copyright law. 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, to the extent Amplify's customer information is not publicly available on the company's website, the district must withhold Amplify's customer information under section 552.110(b) of the Government Code. To the extent IStation's customer information

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<sup>3</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).

is not publicly available on the company's website, the district must withhold IStation's customer information we have marked under section 552.110(b) of the Government Code. The district must also withhold IStation's information we have marked that does not pertain to customers under section 552.110(b) of the Government Code. 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; however, 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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 542654

Enc. Submitted documents

c: Two Requestors  
(w/o enclosures)

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