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November 20, 2014

Ms. Melody K. Smith
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OR2014-21161

Dear Ms. Smith:

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# 543860 (DCS No. W000397-090314).

Dallas County Schools (the "DCS"), which you represent, received a request for seven categories of information pertaining to DCS's stop-arm program. DCS claims some of the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. Additionally, DCS states release of the submitted information may implicate the proprietary interests of Force Multiplier Solutions, L.L.C. ("FMS"). Accordingly, DCS states, and provides documentation showing, DCS notified FMS of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (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 exceptions DCS claims and reviewed the submitted information.

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 FMS explaining why the submitted information should not be released. Therefore, we have no basis to

conclude FMS has a protected proprietary interest in the submitted 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, DCS may not withhold the submitted information on the basis of any proprietary interest FMS may have in the information.

Section 552.104 of the Government Code excepts from 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 a governmental body’s interests in competitive bidding situations and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the “competitive advantage” aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body’s legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body’s demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

We understand DCS to contend it has specific marketplace interests in the information it has marked because DCS is competing against other stop-arm programs throughout the State of Texas. DCS states the information at issue reveals its pricing methodology, includes information about its customers and prospective customers, and details the strengths and weaknesses of its business plan. DCS argues release of this information “would enable its competitors to more effectively, and unfairly, compete against DCS in the future.” Based on these representations and our review, we find DCS has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. Further, we find DCS has demonstrated release of the information at issue would cause specific harm to DCS’s marketplace interests in a particular competitive situation. Accordingly, DCS may withhold the information it has marked under section 552.104 of the Government Code.¹ As DCS makes no other arguments for the remaining information, DCS must release it.

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

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 543860

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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