



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2014

Ms. Laura Cade
Director of Public Relations
Clint Independent School District
14521 Horizon Boulevard
El Paso, Texas 79836

OR2014-21577

Dear Ms. Cade:

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# 545076.

The Clint Independent School District (the "district") received a request for information related to request for proposals number 230-56 CMS and Hosted Web Services. You claim the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You also state release of the requested information may implicate the proprietary interests of certain third parties. 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 submitted information should not be released.¹ *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 considered the exceptions you claim 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 any

¹The third parties notified pursuant to section 552.305 of the Government Code are the following: CatapultK12; DataXport.Net, L.L.C.; Schoolwires, Inc. ("Schoolwires"); Blackboard Engage; Edlio, Inc.; and Intrafinity o/a SharpSchool. We note the requestor is a representative of Schoolwires.

of the third parties explaining why the information should not be released. Therefore, we have no basis to conclude these third parties have 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, 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 any of the information at issue on the basis of any proprietary interest any third party may have in it.

The district generally claims the submitted information should be withheld under section 552.101 of the Government Code. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, the district has failed to direct our attention to any law, nor are we aware of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101. Therefore, the district may not withhold the information at issue under section 552.101 of the Government Code.

Section 552.104 of the Government Code excepts from required public disclosure “information which, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). 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) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive situation, and not interests of private parties submitting information to government). 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). Although you generally assert section 552.104, you provide no arguments to support this exception. Thus, we find you have failed to demonstrate potential harm to the district’s interests in a particular competitive situation. Accordingly, the district may not withhold any of the submitted information under section 552.104 of the Government Code.

Finally, the district raises section 552.110 of the Government Code as an exception to disclosure of the requested information. Section 552.110 protects trade secrets and commercial or financial information obtained from a person. However, 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 argument under section 552.110 of the Government Code.

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.”² Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the district must withhold the insurance policy numbers contained in the submitted records under section 552.136 of the Government Code.

We note some of the materials 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.

In summary, the district must withhold the insurance policy numbers in the submitted records under section 552.136 of the Government Code. The district must release the remaining information; however, any information that is 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 545076

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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