



February 25, 2015

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701

OR2015-03740

Dear Mr. Meitler:

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# 554690 (TEA PIR# 23373).

The Texas Education Agency (the "agency") received a request for a copy of the contracts and winning proposals pertaining to a specified RFP and proposals submitted to the agency in response to a second specified RFP.<sup>1</sup> Although you take no position as to whether the submitted information is excepted by the Act, you state release of the submitted information may implicate the proprietary interests of Curriculum Associates, LLC ("CA"); DreamBox Learning, Inc.; Edgenuity, Inc. ("Edgenuity"); Edmentum; ExploreLearning; The Imagination Station, Inc. ("Istation"); Learning Through Sports; Peoples Education; Think Through Learning Inc.; and Voyager Sopris Learning, Inc. 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

---

<sup>1</sup>We note the agency sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 CA, Edgenuity, and an attorney for Istation. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-18473 (2012). In Open Records Letter No. 2012-18473, we concluded the agency must withhold the information we marked under section 552.110 of the Government Code and must release the remaining information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the agency must continue to rely on Open Records Letter No. 2012-18473 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Next, we note 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 only received comments from CA, Edgenuity, and Istation explaining why their submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have protected proprietary interests 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 agency may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

CA, Edgenuity, and Istation argue portions of their information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>2</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983). We note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255, 232 (1979), 217 (1978).

---

<sup>2</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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[.]” Gov’t Code § 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 (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).

We note some of the information Edgenuity seeks to withhold was previously released in Open Records Letter No. 2015-00947 (2015) because Edgenuity did not provide arguments objecting to the release of the information at issue in that ruling. Since the issuance of that ruling, Edgenuity has not disputed this office’s conclusion regarding the release of the information at issue. In this regard, we find Edgenuity has not taken any measures to protect the information at issue in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Edgenuity substantial harm. *See* Gov’t Code § 552.110; RESTATEMENT OF TORTS § 757 cmt. b; *see also* ORDs 661, 319 at 2 (1982), 306 at 2(1982), 255 at 2 (1980). Accordingly, we conclude the agency may not withhold the information of Edgenuity that was previously released in Open Records Letter No. 2015-00947 under section 552.110 of the Government Code.

CA, Edgenuity, and Istation argue portions of their remaining information consist of commercial information, the release of which would cause the companies substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we conclude Istation and Edgenuity have established the release of their client information would cause them substantial competitive injury. Accordingly, to the extent the client information is not publicly available on these third parties’ websites, the agency must withhold the client information at issue under section 552.110(b). Additionally, we find Edgenuity and Istation have established that a portion of their information, which we have marked, constitutes commercial or financial information, the release of which would cause the companies substantial competitive harm. Therefore, the agency must withhold this information under section 552.110(b) of the Government Code. However, we find none of the third parties have provided a specific factual or evidentiary showing that the release of the remaining information at issue would cause substantial competitive injury. *See* Open Records Decision Nos. 661 at 5-6 (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), 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), and 175 at 4 (1977) (résumés cannot be said to fall within any exception to the Act). Therefore, none of

the remaining information may be withheld under section 552.110(b) of the Government Code.

CA and Edgenuity argue their remaining information constitutes trade secrets. Upon review, we find CA and Edgenuity have established a *prima facie* case the information we have marked constitutes trade secret information for purposes of section 552.110(a). Accordingly, the agency must withhold the information we have marked under section 552.110(a). However, we find CA and Edgenuity have failed to establish a *prima facie* case any portion of their remaining information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim for their remaining information. *See* ORD 402. Therefore, none of these third parties' remaining information may be withheld under section 552.110(a) of the Government Code.

We note the submitted information contains insurance policy numbers. Section 552.136(b) of the Government Code provides, “[n]otwithstanding 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.”<sup>3</sup> Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the agency must withhold the insurance policy numbers in the submitted information 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 agency must continue to rely on Open Records Letter No. 2012-18473 as a previous determination and withhold or release the previously ruled upon information. To the extent Edgenuity’s and Istation’s client information are not publicly available on their websites, the agency must withhold this information, as well as the information we have marked, under section 552.110(b) of the Government Code. The agency must withhold the information we have marked under section 552.110(a) of the Government Code. The agency must withhold the insurance policy numbers under section 552.136 of the Government Code. The agency must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

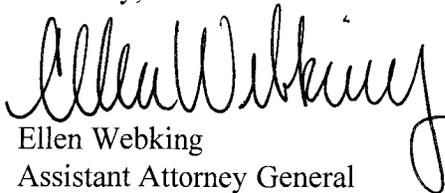
---

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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/akg

Ref: ID# 554690

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Jason Bedford  
DreamBox Learning Inc.  
305 108<sup>th</sup> Avenue NE  
Bellevue, Washington 98004  
(w/o enclosures)

M. Vicky Hurwitz  
Curriculum Associates  
153 Rangeway Road  
North Billerica, Massachusetts 01862  
(w/o enclosures)

G. Michael Gruber  
For Imagination Station  
Gruber Hurst Johansen Hail Shank  
1445 Ross Avenue, Suite 2500  
Dallas, Texas 75202-2711  
(w/o enclosures)

Linnea Grooms  
Edgenuity  
7303 East Earll Drive  
Scottsdale, Arizona 85251  
(w/o enclosures)

Mitch Wacker  
Edmentum  
2425 North Central Expressway,  
Suite 1000  
Richardson, Texas 75080  
(w/o enclosures)

Amy Otis  
ExploreLearning  
Voyager Sopris Learning  
17855 Dallas Parkway, Suite 400  
Dallas, Texas 75287  
(w/o enclosures)

Benj Sampson  
Learning Through Sports  
1063 Narrows Way, Suite C  
Birmingham, Alabama 35242  
(w/o enclosures)

Victoria Kiely  
Peoples Education  
299 Market Street, Suite 240  
Saddle Brook, New Jersey 07663  
(w/o enclosures)

Kevin McAliley  
Think Through Learning, Inc.  
116 Federal Street, Floor 2  
Pittsburgh, Pennsylvania 15212  
(w/o enclosures)