



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2015

Ms. Rosanna Oliver
Coordinator Legal Services
Governmental Relations
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR2015-20238

Dear Ms. Oliver:

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# 580806.

The Round Rock Independent School District (the "district") received two requests from different requestors for information pertaining to a specified request for proposals. The district indicates it has released some information to the requestors. Although the district takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of The Library Corporation ("TLC"), Sirsi Corporation d/b/a SirsiDynix, and Follett School Solutions, Inc. Accordingly, the district states, and provides documentation showing, it notified these third parties of the request for information and of their rights 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 received comments from TLC. We have considered the submitted arguments 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 only received comments from TLC explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties 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, the district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

TLC raises section 552.104 of the Government Code for portions of its information. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at *9. TLC indicates it has competitors. In addition, TLC indicates the release of its information would give competitors an advantage by allowing such competitors to “clone, replicate, or reverse engineer [TLC’s] data model” that TLC has designed and developed. After review of the information at issue and consideration of TLC’s arguments, we find TLC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we have marked under section 552.104(a) of the Government Code.

We note some of the remaining information is subject to 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 may withhold the information we have marked under section 552.104 of the Government Code. The district must release the remaining information; however, the district may only release information subject to copyright 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 580806

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Mr. Larry Menlove
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Mr. Kevin Gacek
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