



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 7, 2016

Ms. Cynthia Rincón
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2016-00525

Dear Ms. Rincón:

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# 593183 (ORR 2015-16-312).

The Fort Bend Independent School District (the "district") received a request for information pertaining to a specified request for proposals. You state you will release some of the information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Esped.com Inc.; Lumen Touch LLC ("Lumen"); PCG Education; SEAS Education; and SuccessEd. Accordingly, you state, and provide documentation showing, you 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 reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory

authorization to withhold the information without requesting a decision under the Act. *See* Gov't Code § 552.301(a), (e)(1)(D). We understand the district has redacted e-mail addresses under section 552.137 of the Government Code as permitted by Open Records Decision No. 684 (2009). Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. However, section 552.137 is not applicable to an e-mail address "contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract[.]" *See id.* § 552.137(c)(3). The e-mail addresses you seek to withhold are subject to section 552.137(c)(3). Therefore, the district may not withhold the e-mail addresses at issue under section 552.137 of the Government Code. *See id.* § 552.137(a).

Additionally, you do not assert, nor does our review of our records indicate, the district is authorized to withhold the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Therefore, this information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. In this instance, because we can discern the nature of some of the redacted information, we will address the public availability of this information. However, we are not able to discern the nature of the remaining information you have redacted. Thus, we find the district failed to comply with section 552.301 with respect to this information and such information is presumed public under section 552.302 of the Government Code. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Therefore, the district must release this information. If you believe the information at issue is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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). Lumen informs our office it does not object to the disclosure of its information. As of the date of this letter, we have not received comments from the remaining third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the remaining 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 interests the remaining third parties may have in it.

We note some of the submitted information is subject to section 552.136 of the Government Code.¹ Section 552.136 of the Government Code states “Notwithstanding 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.” Gov’t Code § 552.136(b); *see 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). Upon review, we find the district must withhold the insurance police numbers in the submitted information under section 552.136 of the Government Code.

We note some of the remaining information 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 information under section 552.136 of the Government Code. The district must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

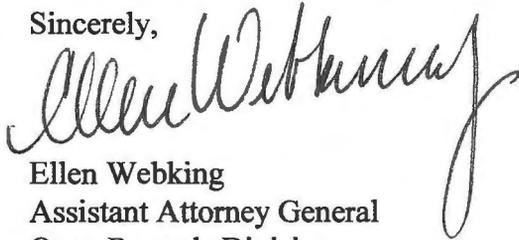
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹The 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).

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# 593183

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Teresea Holloway
Lumen Touch
10502 North Ambassador Drive,
Suite 201
Kansas City, Missouri 64153
(w/o enclosures)

Mr. Rick Baldwin
SuccessEd
2100 McKinney Avenue, Suite
1501
Dallas, Texas 75201
(w/o enclosures)

Ms. Michelle Simmons
PCG Education
816 Congress Avenue, Suite 1110
Austin, Texas 78701
(w/o enclosures)

Mr. Darren Johnson
SEAS Education
1793 P.O. Box 590
Mountain Home, Arkansas 72654
(w/o enclosures)

Mr. George Dhionis
Esped.com Inc.
6 Riverside Drive
Andover, Massachusetts 01810
(w/o enclosures)