



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2016

Ms. Julie C. Allen
General Counsel
Spring Independent School District
16717 Ella Boulevard
Houston, Texas 77090-4213

OR2016-01186

Dear Ms. Allen:

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# 592468 (PIR No. 205).

The Spring Independent School District (the "district") received a request for information pertaining to bid number 13-019. The district is releasing some of the information. However, because release of the submitted information may implicate the proprietary interests of third parties, the district notified Computer Automation Systems; eSPED; SuccessEd; and SunGard 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 SuccessEd. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district failed to timely submit a portion of the submitted information in compliance with section 552.301(e) of the Government Code. Gov't Code § 552.301(e). When a governmental body fails to comply with section 552.301, the information is presumed public and must be released unless there is a compelling reason to withhold it. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists to withhold information

when the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 150 at 2 (1977). Because SuccessEd's proprietary interests may be implicated, we will consider SuccessEd's interest in withholding the information.

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 not received comments from Computer Automation Systems; eSPED; and SunGard explaining why the information should not be released. Therefore, we have no basis to conclude Computer Automation Systems; eSPED; and SunGard have protected proprietary interests in the responsive 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 the information on the basis of any proprietary interest Computer Automation Systems; eSPED; and SunGard may have in it.

SuccessEd argues its information is excepted from disclosure under section 552.104(a) of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 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 841. SuccessEd states it has competitors and often competes for school district contracts for services similar to the one at issue here. SuccessEd argues release of the information would allow its competitors "to craft their own future proposals to mirror or be more favorable than SuccessEd's." After review of the information and consideration of the arguments, we find SuccessEd has established release of the information SuccessEd seeks to withhold would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the submitted SuccessEd information under section 552.104(a).¹

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

¹Because section 552.104 is dispositive, we do not address SuccessEd's other arguments.

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 submitted SuccessEd information under section 552.104(a). 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sb

Ref: ID# 592468

Enc. Marked documents

c: Requestor
(w/o enclosures)

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