



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 16, 2016

Mr. S. Anthony Safi  
Counsel for the Ysleta Independent School District  
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
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OR2016-06085

Dear Mr. Safi:

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# 601863.

The Ysleta Independent School District (the "district"), which you represent, received a request for all evaluation documentation and submitted bid responses for a specified solicitation from vendors other than the requestor's company. You state you will provide some information to the requestor. Although you take no position as to whether the requested information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of Focus School Software; Follett School Solutions, Inc.; Infinite Campus ("Infinite"); SunGard K-12 Education ("SunGard"); and Tyler Technologies, Inc. Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Infinite and SunGard. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, 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) of the Government Code 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 Infinite and SunGard explaining why the 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 district may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Section 552.104(a) of the Government Code 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. Infinite and SunGard state they have competitors. Infinite states release of portions of its information, which it indicated, would give advantage to its competitors. SunGard states release of all of its proposal documents would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Infinite and SunGard have 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 indicated by Infinite and the entirety of SunGard's information under section 552.104(a) of the Government Code.<sup>2</sup>

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 may withhold the information indicated by Infinite and the entirety of SunGard's information under section 552.104(a) of the Government Code. The district

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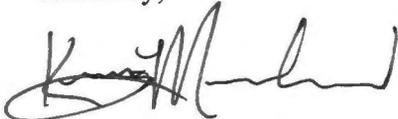
<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

must release the remaining information; however, any information protected by copyright may only be released 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](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 601863

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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