



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2016

Ms. JoAnna Talley  
Public Officer  
Office of Legal Services  
Fort Worth Independent School District  
100 North University Drive, Suite 172  
Fort Worth, Texas 76107

OR2016-08691

Dear Ms. Talley:

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# 606132.

The Fort Worth Independent School District (the "district") received a request for information pertaining to a specified request for proposals.<sup>1</sup> Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of Apex Learning, Inc.; CompassLearning, Inc.; D2L, Ltd.; Edgenuity, Inc.; K12 Virtual Schools, L.L.C.; Nystrom Education/Social Studies School Service; Odysseyware; Pearson Education, Inc.; and Texas ELearning, L.L.C.. Accordingly, the district states, and provides documentation showing, it notified these third parties of the request for information and of the right of each 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

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<sup>1</sup>We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

circumstances). We have received comments on behalf of Compass, Edgenuity, and Odysseyware. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-17092 (2015) and 2015-20875 (2015). In Open Records Letter No. 2015-17092, this office determined the district must withhold Odysseyware's customer information under section 552.110(a) of the Government Code, to the extent the customer information is not publicly available on Odysseyware's website; the district must withhold certain information under section 552.136 of the Government Code; and the district must release the remaining information in accordance with copyright law. In Open Records Letter No. 2015-20875, this office determined the district must withhold Compass's and Edgenuity's customer information under section 552.110(a) of the Government Code, to the extent the marked customer information is not publicly available on the companies' websites; the district must withhold certain information under section 552.110(b) of the Government Code; the district must withhold certain information under section 552.136 of the Government Code; and the district must release the remaining information in accordance with copyright law. However, Compass now seeks to withhold some of its information previously ordered released in Open Records Letter No. 2015-20875 under section 552.104 of the Government Code. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although Compass now raises section 552.104 of the Government Code for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 592 (1991) (stating that governmental body may waive section 552.104). Thus, the district may not now withhold any of the previously released information under section 552.104 of the Government Code on behalf of Compass. Furthermore, we understand the law, facts, and circumstances on which Open Records Letter Nos. 2015-17092 and 2015-20875 were based have not changed. Accordingly, we conclude the district must continue to rely on Open Records Letter Nos. 2015-17092 and 2015-20875 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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 that information is or is not excepted from disclosure). As we are able to make this determination, we need not address the remaining third party arguments against disclosure of the information.

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 606132

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)