



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2016

Ms. Mia M. Martin  
General Counsel  
Richardson Independent School District  
400 South Greenville Avenue  
Richardson, Texas 75081-4198

OR2016-20422

Dear Ms. Martin:

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# 628614.

The Richardson Independent School District (the "district") received a request for the pricing portion of the proposals submitted in response to a specified request for proposals, and the scoring and evaluation sheets for each bidder that responded to the request for proposals. You state the district has released some responsive 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. ("eSped"); SEAS Education ("SEAS"); and SuccessEd, LLC ("SuccessEd").<sup>1</sup> Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right 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.

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<sup>1</sup>We note the submitted information includes the requestor's company's proposal. As we do not assume the requestor seeks access to his own company's proposal, we do not address the public availability of that information.

Initially, we note the requestor seeks only the pricing portion of the proposals and the scoring and evaluation sheets. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to the request.

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 eSped or SEAS explaining why the information should not be released. Therefore, we have no basis to conclude eSped or SEAS 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, 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 interest eSped or SEAS may have in it.

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. SuccessEd states it has competitors. In addition, SuccessEd states release of the information at issue would enable the company's competitors to modify their own pricing or undercut SuccessEd on future bids. After review of the information at issue and consideration of the arguments, we find SuccessEd 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 SuccessEd has marked under section 552.104(a) of the Government Code.<sup>2</sup> As no further exceptions to disclosure are raised, the remaining responsive information must be released.

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.

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<sup>2</sup>As our ruling is dispositive, we do not address the other argument to withhold this information.

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,

A handwritten signature in black ink, appearing to read "B. Berger", written over the word "Sincerely,".

Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 628614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

3 Third Parties  
(w/o enclosures)