



February 27, 2015

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

OR2015-03951

Dear Ms. Rincon:

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# 554907.

The Fort Bend Independent School District (the "district") received a request for proposals submitted for Request for Proposal 14-048GT, as well as any scoring materials used by the decision committee. You state, although the district takes no position with respect to the submitted information, its release may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the district notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be

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<sup>1</sup>The third parties notified pursuant to section 552.305 are the following: CompassLearning, Inc. ("Compass"); Connections Education L.L.C. ("Connections"); Edgenuity, Inc. ("Edgenuity"); Edmentum; and LoudCloud Systems, Inc. ("LoudCloud").

released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information and the arguments submitted by representatives of Compass, Connections, Edgenuity, and Edmentum.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-00947 (2015). In Open Records Letter No. 2015-00947, this office concluded, in part, the following: 1) to the extent the customer information of Compass is not publicly available on the company's website, the district must withhold the customer information of Compass under section 552.110(b) of the Government Code; 2) the district must withhold the information of Compass and Connections we marked under section 552.110(b) of the Government Code; 3) to the extent the customer information of Connections is not publicly available on the company's website, the district must withhold the customer information of Connections under section 552.110(a) of the Government Code; 4) the district must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code; and 5) the district must release the remaining information, including Edgenuity's information and LoudCloud's information; however, any information protected by copyright may only be released in accordance with copyright law. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed with respect to the information of Compass, Connections, or LoudCloud. Accordingly, the district must continue to rely on Open Records Letter No. 2015-00947 as a previous determination and withhold or release the information of Compass, Connections, and LoudCloud in accordance with that ruling. *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). However, in Open Records Letter No. 2015-00947, the district notified Edgenuity pursuant to section 552.305 when the district received the previous request for information, and Edgenuity failed to submit comments objecting to the release of its information. Accordingly, in our previous ruling, we ruled the district must release Edgenuity's information. However, Edgenuity now claims some of its information is excepted from disclosure under section 552.110 of the Government Code. Because the proprietary interests of a third party are at stake, we will consider Edgenuity's claims under section 552.110 for this information. Additionally, we will consider Edmentum's arguments for its information, as that information was not at issue in Open Records Letter No. 2015-00947.

Next, we note the district has not submitted any scoring materials for our review. To the extent the district maintained any such information when it received the present request for information, we assume it has been released. If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open

Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Edmentum raises section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, Edmentum does not cite to any confidentiality provision, nor are we aware of any, that makes any of the submitted information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the district may not withhold any of the submitted information under section 552.101 of the Government Code.

Edmentum also raises section 552.104 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. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). As the district does not argue section 552.104 is applicable, we will not consider Edmentum's claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the district may not withhold any of the submitted information under section 552.104 of the Government Code.

Edgenuity and Edmentum each claim some of their information is excepted under section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov't Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person that are privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be the following:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>2</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *See id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

As mentioned above, Edgenuity’s information was subject to Open Records Letter No. 2015-00947. In the prior ruling, the district notified Edgenuity of the request for information pursuant to section 552.305 of the Government Code. Edgenuity did not object to the release of its information. Since the issuance of the previous ruling on January 16, 2015, Edgenuity has not disputed this office’s conclusion regarding the release of the information, and the district informed us that, in accordance with that ruling, it has released the information. In this regard, we find Edgenuity has not taken any measures to protect its information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Edgenuity substantial harm. *See* Gov’t Code § 552.110; RESTATEMENT OF TORTS

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<sup>2</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

§ 757 cmt. b; *see also* ORDs 661, 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). Accordingly, we conclude the district may not withhold Edgenuity's information under section 552.110 of the Government Code.

Additionally, upon review, we conclude Edmentum has failed to establish a *prima facie* case that any portion of its information meets the definition of a trade secret. We also find Edmentum has not demonstrated the necessary factors to establish a trade secret claim for its information. *See* ORD 402. Further, we find Edmentum has not demonstrated that substantial competitive injury would result from the release of any of its information. *See* ORD 661 at 5. Therefore, the district may not withhold any of Edmentum's information under section 552.110 of the Government Code.

Section 552.136 of the Government Code states, in part, "Notwithstanding any other provision of this chapter, 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 also 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). Accordingly, the district must withhold the insurance policy numbers in the remaining information under section 552.136.

Some of the remaining information appears to be subject to copyright law. 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 continue to rely on Open Records Letter No. 2015-00947 as a previous determination and withhold or release the information of Compass, Connections, and LoudCloud in accordance with that ruling. The district must withhold insurance policy numbers within the remaining information under section 552.136 of the Government Code. The district 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](#), 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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLG/cz

Ref: ID# 554907

Enc. Submitted documents

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