



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2015

Ms. Elaina Polsen
Executive Director of Communication
Clear Creek Independent School District
2425 East Main Street
League City, Texas 77573

OR2015-20219

Dear Ms. Polsen:

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# 580949 (CCISD ID# 100745 and 100762).

The Clear Creek Independent School District (the "district") received two requests for information pertaining to a specified request for proposals. 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 interest of Blackboard, Inc. ("Blackboard"), Canvas, D2L, Ltd., ItsLearning Inc., Lightspeed Systems, Safari Montage ("Safari"), and RGS Avnet. Accordingly, you state you notified these parties of the request for information and of their rights 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 Blackboard and Safari. We have considered the submitted arguments and reviewed the submitted information.

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 Blackboard and Safari explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining 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 any portion submitted information related to the remaining third parties on the basis of any proprietary interest they 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*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 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 *9. Blackboard and Safari state they each have competitors. In addition, Blackboard contends the release of its information at issue would provide its competitors with a significant unfair competitive advantage by revealing its proprietary licensing methodologies, pricing, and technical specifications. Blackboard states release would result in irreparable competitive harm to Blackboard. Safari states it will be substantially harmed by the release of its information to its competitors. After review of the information at issue and consideration of the arguments, we find Blackboard and Safari have established the release of each company’s submitted information would give an advantage to a competitor or bidder. Thus, we conclude the district may withhold the proposals submitted by Blackboard and Safari under section 552.104(a).

In summary, the district may withhold the proposals submitted by Blackboard and Safari under section 552.104(a). The district must release the remaining 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, 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 580949

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Ms. Tess Frazier
Vice President - Legal
Blackboard, Inc.
650 Massachusetts Avenue, NW
Washington, D.C. 20001-3796
(w/o enclosures)

Ms. Kasey Rasmussen
Canvas
6330 South 3000 East
Salt Lake City, Utah 84121
(w/o enclosures)

Mr. Nicholas Ramsey
D2L, Ltd.
715 Saint Paul Street
Baltimore, Maryland 21202
(w/o enclosures)

Ms. Lisa Dubernard
ItsLearning Inc.
300 Washington Street, Suite 702
Newton, Massachusetts 02458
(w/o enclosures)

Mr. Scott Meeks
Lightspeed Systems
106 East Sixth Street, Suite 500
Austin, Texas 788701
(w/o enclosures)

Ms. Elizabeth Zimmer
RGS Avnet
2211 South 47th Street
Phoenix, Arizona 85034
(w/o enclosures)