



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 21, 2017

Mr. Osman Balaman
Legal Coordinator
Harmony Public Schools
9321 West Sam Houston Parkway South
Houston, Texas 77099

OR2017-05784

Dear Mr. Balaman:

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# 649960.

Harmony Public Schools (the "school") received a request for information pertaining to a specified bidding situation. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You state release of the submitted information may implicate the proprietary interests of Pearson Education, Inc. ("Pearson"). Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of its 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 considered the exception you claim and reviewed the submitted information.

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Pearson explaining why the submitted information should not be released. Therefore, we have no basis to conclude Pearson has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent

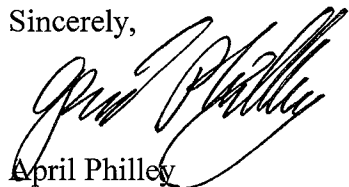
disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the school may not withhold the submitted information on the basis of any proprietary interest Pearson 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). 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.” *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent the information at issue pertains to a contract that has been awarded and executed. However, you state the school “has a perpetual need to secure contracts related to the provisions of online assessment and intervention services so that the school may meet its obligation to provide an appropriate and meaningful education to all students.” Thus, we understand the school solicits bids for similar services on a recurring basis. In addition, you assert release of the information at issue would result in unfair competition. After review of the information at issue and consideration of the arguments, we find the school has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the school may withhold the submitted information under section 552.104(a).

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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 649960

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1Third Party
(w/o enclosures)