



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Ms. Amanda K. Davis  
Associate General Counsel  
Dallas County Schools  
8035 East RL Thornton Freeway, Suite 200  
Dallas, Texas 75228

OR2017-07316A

Dear Ms. Davis:

This office issued Open Records Letter No. 2017-07316 (2017) on April 7, 2017. We have examined this ruling and determined we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 7, 2017. The correspondence was assigned ID# 661646 (ORR# W001286).

Dallas County Schools ("DCS") received a request for contracts, job descriptions, and payments to several named individuals and entities during specified time periods. You state DCS has released some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Dean International, Inc. ("Dean"); The LeMaster Group, LTD ("LeMaster"); and The Schlueter Group ("Schlueter"). Accordingly, you state, and provide documentation showing, you notified Dean, LeMaster, and Schlueter 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 Dean. We have reviewed the submitted information and the submitted arguments.

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. Dean states it has competitors. In addition, Dean states release of the information would present the opportunity for its competitors to use the information to Dean’s competitive disadvantage. After review of the information at issue and consideration of the arguments, we find Dean has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude DCS may withhold Dean’s information under section 552.104(a) of the Government Code.<sup>1</sup>

Next, 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 LeMaster or Schlueter explaining why the submitted information should not be released. Therefore, we have no basis to conclude LeMaster or Schlueter 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, DCS may not withhold the submitted information on the basis of any proprietary interest LeMaster or Schlueter may have in the information.

In summary, DCS may withhold Dean’s information under section 552.104 of the Government Code. DCS 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.

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<sup>1</sup>As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure.

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 that reads "Claire Morris Sloan". The signature is written in a cursive style with a large, stylized initial "C" and a long horizontal flourish at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 661646

c: Requestor

3 Third Parties