



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2017

Mr. Christopher B. Gilbert
Counsel for the Katy Independent School District
Thompson & Horton, L.L.P.
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027

OR2017-14986

Dear Mr. Gilbert:

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# 665010.

The Katy Independent School District (the "district"), which you represent, received a request for all information pertaining to the requestor's child and user manuals for software used by the district. The district states it is releasing some of the requested information. Although the district takes no position as to whether the submitted information is excepted under the Act, the district states release of the submitted information may implicate the proprietary interests of eSped.com, Inc. ("eSped"). Accordingly, the district states, and provides documentation showing, it notified eSped of the request for information and of the 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 eSped. We have reviewed the submitted arguments and the submitted representative sample of information.¹

Initially, eSped argues the submitted information is not responsive to the request for information because it does not consist of information pertaining to the requestor's child.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find all of the submitted documents are responsive to the request. We will therefore address the claimed exceptions for the entirety of the submitted 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*, 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. eSped states it has competitors. In addition, eSped states release of the information would “provide eSped’s competitors with a blueprint for competing with eSped, without the investment of money and effort eSped has made to develop its business.” eSped also states release of the information will allow eSped’s competitors to undercut its future bids, harming its ability to negotiate competitive contracts and compromising its procurement processes. After review of the information at issue and consideration of the arguments, we find eSped 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 submitted information under section 552.104(a) of the Government Code.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

²As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

Ref: ID# 665010

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)