



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 24, 2018

Mr. Ross Laughead  
General Counsel  
District Office of Legal Services  
Alamo College District  
201 West Sheridan Building C-8  
San Antonio, Texas 78204-1429

OR2018-01567

Dear Mr. Laughead:

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# 692646.

The Alamo College District (the "district") received two requests from different requestors for information pertaining to a specified request for proposals. You state the district has no responsive information to part of the second request.<sup>1</sup> Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Attain, LLC ("Attain"); EdFinancial Services LLC ("EdFinancial"); Financial Aid Services, Inc. ("Financial Aid"); Nebraska Student Loan Program, Inc. d/b/a Inceptia ("Inceptia"); the Kentucky Higher Education Assistance Authority (the "KHEEA"); and ProEducation Solutions, LLC ("ProEducation"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request and of their right to submit arguments to this office. *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

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

explain applicability of exception in the Act in certain circumstances). We received comments from Attain and the KHEEA. We have reviewed the submitted arguments and the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from EdFinancial, Financial Aid, Inceptia, or ProEducation. Thus, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 of the submitted information on the basis of any proprietary interest these third parties 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*, 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. Attain and the KHEEA state they have competitors. In addition, the KHEEA states release of portions of its information would provide its competitors with a competitive advantage and put the KHEEA at a competitive disadvantage. Further, Attain states it "operates in a highly competitive landscape of consulting firms and other firms for business from state and private universities and colleges." Attain states its competitive standing "will be substantially harmed by the release" of portions of its information because "competitor[s] will be free to analyze and draw from Attain's price and total costs . . . and use that information on their own proposals." After review of the information at issue and consideration of the arguments, we find Attain and the KHEEA established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the district may withhold the information we marked under section 552.104(a) of the Government Code.<sup>2</sup>

We note some of the remaining information appears to be protected by copyright. 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

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

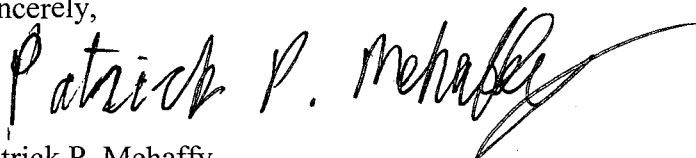
applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold the information we marked under section 552.104 of the Government Code. The district must release the remaining information; however, any information subject to 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](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,



Patrick P. Mehaffy  
Attorney  
Open Records Division

PPM/som

Ref: ID# 692646

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

6 Third Parties  
(w/o enclosures)