



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2018

Ms. Kristi Godden
Counsel for La Joya Independent School District
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701-2208

OR2018-02144

Dear Ms. Godden:

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# 693985 (LJISD-130).

The La Joya Independent School District (the "district"), which you represent, received a request for information regarding solicitation number 2017-45. 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 interests of Imagine Learning, Inc. ("Imagine"). Accordingly, you state, and provide documentation showing, you notified Imagine 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 received comments from Imagine. 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. Imagine generally asserts section 552.104. Upon review, we find

Imagine has failed to demonstrate release of this information would give advantage to a competitor or bidder. Accordingly, the district may not withhold any portion of Imagine's information under section 552.104(a) of the Government Code.

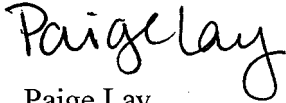
We understand Imagine to raise section 552.110(b) of the Government Code which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; see also Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Upon review, we find Imagine has failed to demonstrate the release of any of its information would result in substantial harm to its competitive position. See Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1992) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Furthermore, we note the contract at issue was awarded to Imagine. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder is generally not excepted under section 552.110(b). See Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). See generally Dep’t of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Accordingly, the district may not withhold any of submitted information under section 552.110(b) of the Government Code. As no other exceptions to disclosure have been raised, the submitted information must be released.

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,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

Ref: ID# 693985

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Third Party
(w/o enclosures)