



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 22, 2019

Ms. Ingrid Gunter
Paralegal
Lewisville Independent School District
P. O. Box 217
Lewisville, Texas 75067

OR2019-23474

Dear Ms. Gunter:

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# 782094 (PIR No. 1819-253).

The Lewisville Independent School District (the "district") received a request for the bid tabulation pertaining to Request for Proposals No. F1003D-17, Professional Development Consultants, Services and Materials. Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of third parties. You state you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from Carnegie Learning, Inc. ("Carnegie") and Lakeshore Learning Materials ("Lakeshore"). We have considered the submitted arguments 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 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 letter, we have not received arguments from any of the remaining third parties. Thus, the remaining third parties have not demonstrated the companies have protected proprietary interests in any of 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 the submitted information on the basis of any proprietary interests any of the remaining third parties may have in the information.

Next, we note Carnegie objects to disclosure of its proposal, which the district has not submitted to this office for review. This ruling does not address information that was not submitted by the district and is limited to the information submitted as responsive by the city. See Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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. Carnegie and Lakeshore each state they have competitors. In addition, Carnegie and Lakeshore assert release of their pricing information would cause harm to their interests and provide advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Carnegie and Lakeshore have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude district may withhold the information we marked under section 552.104(a) of the Government Code.¹ The district 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/jxd

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ms. Ingrid Gunter - Page 3

Ref: ID# 782094

Enc. Submitted documents

c: Requestor
(w/o enclosures)

28 Third Parties
(w/o enclosures)