



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2020

Ms. Lindsey McPheeters
Interim General Counsel
Round Rock Independent School District
1 Chisholm Trail, Suite 400
Round Rock, Texas 78681

OR2020-28133

Dear Ms. McPheeters:

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# 852837 (TPIA Nos. 2021-049, 2021-063, and 2021-109).

The Round Rock Independent School District (the "district") received three requests from different requestors for certain information pertaining to a specified request for proposals. You state the district will release some information to the requestor upon payment of costs. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, 552.1101, and 552.153 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of the following third parties: ALLDATA, LLC; Apex Learning, Inc. ("Apex"); Breakout EDU; Confident Kids Be Courageous Coaching, LLC; Edgenuity, Inc. ("Edgenuity"); Edmentum; Formative, Loop, Inc.; Pearson Online and Blended Learning; Performance Scoring, LLC; Snappet, Inc. ("Snappet"); Social Studies School Service; Spider Learning, Inc.; Squiggle Park | Dreamscape; and Texas State University – Central Texas Writing Project. Accordingly, you state, and provide documentation demonstrating, the district notified these interested third parties 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 Apex, Edgenuity, and Snappet. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.¹

¹ We 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

Initially, we note the third request is narrower than the other two requests because, in addition to evaluative documents, it only seeks three specified proposals rather than all of the submitted proposals. Thus, the district need not release information to the third requestor that is not responsive to her request for information.

Next, we note 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 any of the remaining third parties explaining why the information at issue should not be released. Thus, we have no basis to conclude any of the remaining third parties have a protected proprietary interest in the information at issue. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the district may not withhold any portion of the submitted information on the basis of any proprietary interest the remaining third parties may have in it.

Next, we note you raise section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(b)-(c). Although you assert portions of the submitted information are excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. In addition, although you raise section 552.1101 of the Government Code for portions of the information at issue, this section protects only the interests of a vendor, contractor, potential vendor, or potential contractor that has provided information to a governmental body, not those of the governmental body itself. *See id.* § 552.1101(c). Thus, we do not address your arguments under sections 552.110 or 552.1101 of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a). 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find you have failed to demonstrate the applicability of section 552.104 to the information at issue. Therefore, we conclude the district may not withhold any portion of the information at issue under section 552.104(a) of the Government Code.

Section 552.153 of the Government Code reads, in relevant part, as follows:

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.

(a) In this section, “affected jurisdiction,” “comprehensive agreement,” “contracting person,” “interim agreement,” “qualifying project,” and “responsible governmental entity” have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

...

(2) the records are provided by a proposer to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the proposer; [or]

(B) financial records of the proposer, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means[.]

Gov’t Code § 552.153(a), (b)(2)(A)–(B). Section 2267.001(10) of the Government Code defines a “qualifying project” as the following:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project’s purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

Id. § 2267.001(10). Further, section 2267.001(11) defines a “responsible governmental entity” as “a governmental entity that has the power to develop or operate an applicable qualifying project.” *Id.* § 2267.001(11). Although you generally raise section 552.153 for the submitted information and state the district is “a responsible governmental entity that has the power to develop or operate an applicable qualifying project” and the information at issue consists of “work product related to a competitive bid[.]” we find you have failed to demonstrate the applicability of section 552.153(b) to the information at issue. Therefore, the district may not withhold any portion of the submitted information under section 552.153 of the Government Code.

Apex raises section 552.104 of the Government Code for a portion of its information. As noted above, section 552.104 excepts from disclosure information “if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 552.104(a) (emphasis added). In *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015), the Texas Supreme Court held section 552.104 does not preclude third parties from raising section 552.104 as an exception to disclosure. *See Boeing*, 466 S.W.3d at 842. However, the Eighty-sixth Legislature has amended section 552.104 since the issuance of *Boeing*. *See* Act of May 25, 2019, 86th Leg., R.S., S.B. 943, § 3. Section 552.104 now expressly limits the protections of section 552.104 to governmental bodies. Gov’t Code § 552.104(a). Therefore, we do not address Apex’s arguments under section 552.104 of the Government Code.

Apex, Edgenuity, and Snappet raise section 552.110 of the Government Code for some of the information at issue.² Section 552.110(b) states, “[e]xcept as provided by [s]ection 552.0222, information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Section 552.110(c) of the Government Code states:

Except as provided by Section 552.0222, commercial 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 is [excepted from required disclosure].

Id. § 552.110(c). Additionally, we note section 552.0222(b) lists certain types of information to which section 552.110 does not apply. *See id.* § 552.0222(b). Upon review, we find Apex, Edgenuity, and Snappet have demonstrated portions of their information at issue, including client information pertaining to Apex and Edgenuity, constitute commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the district must withhold the information we marked and indicated and, to the extent it is not publicly available on the company websites belonging

² Although Apex and Snappet raise former subsections 552.110(a) and 552.110(b) of the Government Code in their briefs, we understand Apex and Snappet to raise current subsections 552.110(b) and 552.110(c) based on the substance of their arguments.

to Apex and Edgenuity, the client information we marked and indicated under section 552.110(c) of the Government Code.³ However, to the extent the client information we marked and indicated is publicly available on the company websites belonging to Apex and Edgenuity, we find the district may not withhold such client information under either section 552.110(b) or section 552.110(c). Additionally, we find some of the remaining information at issue is subject to section 552.0222(b) and may not be withheld on the basis of section 552.110 of the Government Code. Further, we find Apex and Snappet have failed to provide specific factual evidence demonstrating any portion of the rest of the remaining information at issue is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the district may not withhold any portion of the remaining information at issue under section 552.110 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a government body is confidential.”⁴ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of this exception. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the district must withhold all insurance policy numbers within the remaining information under section 552.136 of the Government Code.

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 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 must withhold the information we marked and indicated and, to the extent it is not publicly available on the company websites belonging to Apex and Edgenuity, the client information we marked and indicated under section 552.110(c) of the Government Code. The district must withhold all insurance policy numbers within the remaining information under section 552.136 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.

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 852837

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

c: 14 Third Parties
(w/o enclosures)