



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 23, 2022

Ms. Katheryne Ellison  
Assistant General Counsel  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2022-14689

Dear Ms. Ellison:

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# 947275 (PIR No. Menifee M021122).

The Houston Independent School District (the "district") received a request for information pertaining to four specified requests for proposals.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code.<sup>2</sup> In addition,

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<sup>1</sup> We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). In addition, after receiving the clarified request, the district sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required to requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The district states it received the deposit on February 28, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

<sup>2</sup> Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

you state release of the submitted information may implicate the proprietary interests of numerous third parties.<sup>3</sup> Accordingly, you state, and provide documentation showing, you notified these third parties 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 AIR, Catapult, German, and TCEE. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>4</sup>

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.” Gov't Code § 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 the district has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the district may withhold the submitted information under section 552.104(a) of the Government Code.<sup>5</sup>

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.

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<sup>3</sup> The third parties notified pursuant to section 552.305 of the Government Code are as follows: Accelerate Learning, Inc.; American Institutes for Research (“AIR”); American Reading Company; ASCD; Battelle for Kids; Cambridge Education, L.L.C.; Catapult Learning West, L.L.C. (“Catapult”); Corwin Press, a SAGE Publications, Inc., Company; Discovery Education, Inc.; Education Analytics, Inc.; Fundamentals for Education, L.L.C.; Generation Ready, Inc.; German Consulting and Resources, L.L.C. (“German”); Houghton Mifflin Harcourt Publishing Company; Knowledge Delivery Systems, Inc.; Lead4ward, L.L.C.; Learning Together; Neuhaus Education Center; Proof Leadership Group, L.L.C.; SAS Institute, Inc.; Texas Center for Educator Effectiveness (“TCEE”); The Bryant Heritage, L.L.C.; WestEd; Why Try, L.L.C.; and Young Audiences of Houston.

<sup>4</sup> 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 letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>5</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jxd

Ref: ID# 947275

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

24 Third Parties  
(w/o enclosures)