



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2022

Ms. Holly A. Sherman
Counsel for KIPP Texas Public Schools
Karczewski, Bradshaw & Spalding
3700 Buffalo Speedway, Suite 560
Houston, Texas 77098

OR2022-30694

Dear Ms. Sherman:

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# 976597.

KIPP Texas Public Schools ("KIPP"), which you represent, received a request for a specified agreement. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of First Student, Inc. ("First Student"). Accordingly, you state, and provide documentation demonstrating, KIPP notified First Student 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 First Student. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note First Student argues against the release of information KIPP has not submitted to this office for our review. This ruling does not address information that was not submitted by KIPP and is limited to the information KIPP has submitted for our review.¹ *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 a governmental body demonstrates, if released, would "harm its interests by providing an

¹ As we are able to make this determination, we need not address First Student's arguments against disclosure of this information.

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 established the release of the information at issue would harm KIPP’s interests by providing an advantage to a competitor or bidder with respect to both a particular ongoing competitive situation, and a particular competitive situation that is set to reoccur or for which you have demonstrated there is a specific and demonstrable intent to enter into the competitive situation again in the future. Accordingly, we conclude KIPP may withhold the submitted information under section 552.104(a) of the Government Code.²

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/pt

Ref: ID# 976597

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

² As our ruling is dispositive, we need not address First Student’s arguments against disclosure of the submitted information.