



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 22, 2007

Mr. David Galbraith  
Assistant General Counsel  
Houston Independent School District  
4400 West 18<sup>th</sup> Street  
Houston, Texas 77092-8501

OR2007-00671

Dear Mr. Galbraith:

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# 269514.

The Houston Independent School District (the "district") received a request for information related to district project #05-02-01 for a Student Information System. The requestor specifically seeks: 1) a copy of the district's contract with Chancery, 2) a copy of the district's request for proposal, 3) a copy of all proposals received, 4) a list of who was on the team evaluating the proposals, 5) a copy of the instrument used to compare the proposals, and 6) answers to a number of general questions regarding the project. You state that you will release a portion of the requested information, including information that this office has previously addressed in a prior ruling. You claim that some of the remaining information is exempted from disclosure under sections 552.104 and 552.107 of the Government Code. You also indicate that pursuant to section 552.305 of the Government Code, you notified Chancery Software, Inc. ("Chancery"), Maximus, Inc. ("Maximus"), Pearson School Systems ("Pearson"), and Skyward, Inc. ("Skyward") of their opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 reviewed the submitted information and reviewed the submitted arguments.

Initially we note that the request at issue requests six categories of information. You have only submitted proposals responsive to the third part of the request. To the extent any information responsive to the remaining five categories existed on the date the district received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We also note that Chancery seeks to withhold information that was not submitted to this office by the district. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we must address the district's procedural obligations under the Act. You state that portions of the submitted records are excepted from public disclosure under sections 552.104 and 552.107 of the Government Code. Pursuant to section 552.301(e), the governmental body must submit to this office written comments stating the reasons why the stated exceptions apply that would allow the information at issue to be withheld. Gov't Code § 552.301(e)(1)(A). In this instance, you have failed to submit to this office any arguments explaining how sections 552.104 and 552.107 apply to the submitted records. Sections 552.104 and 552.107 are discretionary exceptions that protect only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 592 (1991) (statutory predecessor to section 552.104 may be waived and is designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government), 522 (1989) (discretionary exceptions in general). Therefore, by failing to comply with section 552.301(e), the district has waived its claims under sections 552.104 and 552.107 for the submitted records. Accordingly, you may not withhold any information under those exceptions.

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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Pearson explaining how the release of the company's information will affect its proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of Pearson. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

With respect to the proposals submitted by Chancery, Maximus, and Skyward we note that the proposals have been previously ruled upon by this office in Open Records Letter No. 2006-04656 (2006). You state that you have released the proposals at issue in accordance with the ruling in Open Records Letter No. 2006-04656. As we have no indication that the law, facts, and circumstances surrounding this prior ruling have changed, you may continue to rely on Open Records Letter No. 2006-04656 as a previous determination and withhold portions of the proposals submitted by Chancery, Maximus, and Skyward in accordance with this prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In summary, you must release the proposal submitted by Pearson. You must withhold portions of the proposals submitted by Chancery, Maximus, and Skyward in accordance with Open Records Letter No. 2006-04656.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 269514

Enc. Submitted documents

c: Ms. Ericka Mellon  
Houston Chronicle  
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Houston, Texas 77002  
(w/o enclosures)

Pearson School Systems  
Attn: Robert A. Mignanelli  
827 West Grove Avenue  
Mesa, Arizona 85210-4931  
(w/o enclosures)

Maximus, Inc.  
Attn: Barbara DelBove  
2800 South IH-35, Suite 109  
Austin, Texas 78704  
(w/o enclosures)

Skyward, Inc.  
P.O. Box 166  
Steven's Point, Wisconsin 54481-0166  
(w/o enclosures)