



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 26, 2016

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

OR2016-16762

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# 620066 (File No. J050516).

The Houston Independent School District (the "district") received a request for information related to a specified request for proposals, including the bid tabulation, scoring and evaluation documents, award notice, and the awarded vendors' submissions. You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. You further state release of the submitted information may implicate the proprietary interests of Achieve 3000, Inc.; American Reading Company; Apex Learning Company; Capstone; Curriculum Associates, LLC; Don Johnston, Inc.; Eduthings, LLC ("Eduthings"); Globaloria, LLC; Greenwood Publishing; Imagine Learning, LLC; Innovations for Learning, Inc.; Imagination Station, Inc.; Learning A-Z, LLC; Newsela, Inc.; Perfection Learning Corp. ("Perfection"); Rally! Education; Reasoning Mind, LLC; Super Duper, Inc. D/B/A Super Duper Publications; Voyager Sopris Learning, Inc.; and Summit K12 Holdings, Inc. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights 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 Eduthings

and Perfection. We have considered the raised arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” 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 (Tex. 2015). You represent the information pertains to competitive bidding situations. In addition, you state, although the district has selected some winning bidders, the district has not yet selected all winning bidders or executed contracts for the project at issue, and contract negotiations are ongoing. You assert release of the submitted information could interfere with the district’s bargaining position or otherwise interfere with ongoing negotiations regarding costs. After review of the information at issue and consideration of the arguments, we find district has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude district may withhold the submitted information under section 552.104(a).<sup>2</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.

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

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<sup>1</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize the withholding of, any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup>As our ruling is dispositive, we need not consider the remaining arguments against disclosure.

Ref: ID# 620066

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

20 Third Parties  
(w/o enclosures)