



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Ms. Rosa Miranda Smith  
Supervisor Document Services & Fixed Assets  
Irving Independent School District  
3620 Valley View Lane  
Irving, Texas 75062

OR2016-18405A

Dear Ms. Smith:

This office issued Open Records Letter No. 2016-18405 (2016) on August 15, 2016. Since that date, the Irving Independent School District (the "district") has provided new information pertaining to Scholastic, Inc. ("Scholastic"), which, at the time of its request for a decision, the district failed to submit for review by our office. Thus, we must address the interests of Scholastic whose proprietary interests are at issue for this newly submitted information. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 15, 2016. Your request was assigned ID# 633199 (16-1266, 16-1401, 16-1402, 16-1439, 16-1447, and 16-1448).

The district received multiple requests for information pertaining to a specified request for proposals.<sup>1</sup> You state the district has released some information. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Advanced Educational Products, Inc. ("AEP"); AKJ Education ("AKJ"); Cengage Learning, Inc. ("Cengage"); Follett School Solutions, Inc. ("Follett"); GL Group, Inc., d/b/a Booksource ("Booksource"); Mrs. Nelson's Library Services ("Mrs. Nelson's"); Really Good Stuff; Scholastic; and Teacher Created

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<sup>1</sup>We understand the district sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). As you have not submitted a copy of all of the requests for information for our review, we take our description from your brief.

Materials (“TCM”).<sup>2</sup> Accordingly, you state, and provide documentation showing, you notified these third parties of the requests and their rights to submit arguments to this office. *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 Scholastic.<sup>3</sup> We have considered the submitted information and the arguments submitted by Scholastic.

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from AEP, Booksources, or TCM. Thus, we have no basis to conclude any of these third parties have protected proprietary interests in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest these third parties may have in the information.

Next, we note Scholastic argues against disclosure of information not submitted to this office for review. This ruling does not address information beyond what the district has submitted to us for our review. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit a copy of specific information requested). Accordingly, this ruling is limited to the information the district submitted as responsive to the request for information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). 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.” *Id.* at 841. Scholastic states it has competitors. In addition, Scholastic states release of the information it marked under section 552.104 of the Government Code could “be used to undercut Scholastic in bids throughout the country” and would “give advantage to a competitor.” After review of the information at issue and consideration of the arguments, we find Scholastic has established the release of the information at issue would give an advantage

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<sup>2</sup>We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(b), (e). Nevertheless, because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>3</sup>You inform us, and provide documentation showing, AKJ, Cengage, Follett, Mrs. Nelson’s, and Really Good Stuff do not object to release of any of their information.

to a competitor or bidder. Thus, we conclude the district may withhold the information we marked under section 552.104(a).<sup>4</sup>

The remaining information includes insurance policy numbers.<sup>5</sup> Section 552.136 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 governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the district may withhold the information we marked under section 552.104(a) of the Government Code. The district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The district must release the remaining information.

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bhf

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<sup>4</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>5</sup>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).

Ref: ID# 633199

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

Third Parties  
(w/o enclosures)