



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

February 23, 1989

Mr. David Thompson  
General Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 5217; this decision is OR89-72.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Texas Education Agency (TEA) received a request from Ms. Laura S. Groce, attorney for CTB/McGraw-Hill Publishing Company, for information concerning testing proposals for the student assessment program in Texas. The TEA received proposals from three publishing companies. After the TEA had chosen a proposal, it received a request from CTB/McGraw-Hill, one of the companies not chosen, for all ratings and evaluations made by the committee of educators during the selection period. You state that you will release the ratings and evaluations concerning a particular company to that company. However, you claim that the information concerning the other companies is excepted from disclosure to CTB/McGraw-Hill by sections 3(a)(1), 3(a)(4), 3(a)(10), and 3(a)(21) of the Open Records Act.

Mr. David Thompson  
February 23, 1989  
Page 2

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 21.556(a) of the Education Code expressly makes confidential "the assessment instruments, items, and tests" of the programs discussed or adopted. See also Art. 6252-17a, § 3(a)(21), V.T.C.S. Therefore, the ratings and evaluations made by the selection committee are excepted from disclosure to the extent that they reveal specific information concerning test items or tests. We have marked information which can be withheld on representative samples of the evaluations as guidelines for your agency to follow.

The remaining information consists primarily of numerical ratings and general comments concerning the proposals. You claim that this information is protected under sections 3(a)(4) and 3(a)(10) of the Open Records Act. However, because the contract has already been awarded, section 3(a)(4) no longer applies. Open Records Decision No. 319 (1982). In addition, this information does not meet the test for trade secrets described in informal decision OR88-391 (1988) (copy enclosed). Nor does it reveal test items sufficiently to allow exception from disclosure under either sections 3(a)(1) or 3(a)(21) of the Open Records Act. Consequently, this information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-72.

Yours very truly,

*Open Government Section*  
*of the Opinion Committee*

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of the Opinion Committee  
Prepared by Steve Aragon  
Assistant Attorney General

SA/BLS/bc

cc: Laura S. Groce

Enclosures: Marked Documents  
OR88-391

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