



July 23, 2001

Mr. David Anderson
General Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2001-3196

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149779.

The Texas Education Agency (the “agency”) received a request for all comments filed with the agency addressing the proposed amendments to chapter 176 of the Texas Administrative Code, including comments in reference to a public hearing on April 23, 2001 and agency comments on the proposed amendments, as well as failure rates. You advise this office that you are only requesting to withhold one document because all of the other responsive documents that you seek to withhold were submitted to this office in connection with two previous requests for a decision. You claim that the submitted document is excepted from disclosure under section 552.111 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

You also advise this office that the requested information may involve the proprietary or property interests of Square Peg Interactive (“Square Peg”), All-Pro Defensive Driving Course, (“All-Pro”), USA Training Company, Inc. (“USA”), U.S. Interactive (“Interactive”), and A DriveSafe Workshop (“DriveSafe”). You have submitted copies of letters notifying these companies about the request as required by section 552.305(d). *See Gov’t Code § 552.305* (permitting interested third party to submit to attorney general

¹In your initial brief, you also asserted sections 552.103, 552.106, 552.107, and 552.122 of the Government Code. However, you have not provided any written comments stating why these sections would apply to the submitted information. *See Gov’t Code § 552.301(e)(1)(A)*. Therefore, we are not addressing these sections of the Government Code in this ruling.

reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

In Open Records Letter No. 2001-2387 (2001), this office determined that Square Peg, and All-Pro failed to demonstrate that their information was excepted from required disclosure and, therefore, had to be released. Thus, you must also release the information of Square Peg and All-Pro to this requestor in accordance with Open Records Letter No. 2001-2387. In Open Records Letter No. 2001-2775 (2001), this office told the agency to release the information of USA, Interactive, and DriveSafe. Therefore, you must release this information to the requestor pursuant to Open Records Letter No. 2001-2775. Further, in Open Records Letter No. 2001-2775, we allowed the agency to withhold most of its comments under section 552.111 of the Government Code. Thus, you may withhold this same information in accordance with Open Records Letter No. 2001-2775. See Open Records Decision No. 673 (2001).² However, you must release the information that we told you to release in Open Records Letter No. 2001-2775.

With regard to the submitted document, you claim section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added).

You explain that the document contains the advice, recommendations, and opinions of agency staff regarding comments made at a public hearing concerning the regulation of driver training schools. After reviewing the submitted document, we conclude that the responses and handwritten notes consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the agency and, therefore, may be withheld under section 552.111 of the Government Code. We have marked the information that you may withhold under section 552.111 of the Government Code.

²The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See ORD 673 at 6-7.

In conclusion, you must release the portions of the requested information that we ordered you to release in Open Records Letter Nos. 2001-2387 and 2001-2775. Further, you may withhold the portions of the requested information that we allowed you to withhold in Open Records Letter No. 2001-2775. You may also withhold the marked information in the submitted document under section 552.111 of the Government Code. You must release the remaining information in the submitted document.

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).

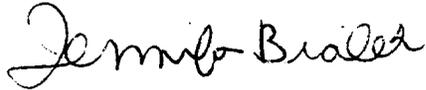
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services Commission 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,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref.: ID# 149779

Enc.: Marked documents

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