



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 12, 2005

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

OR2005-06129

Dear Mr. Anderson:

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# 227914.

The Texas Education Agency (the "agency") received a request for the "2005 proposals . . . for the Scientific Diagnostic Tool, RFP #701-05-005" and the "2002 . . . , 2003, 2004, and 2005 proposals for the Math Diagnostic Assessment Tool, RFP #701-02-015[.]" Although you make no arguments as to whether the submitted information is excepted from disclosure, you believe that the request may involve third party proprietary interests. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, you notified Vantage Learning of the request for information and of its right to submit arguments explaining why the information concerning the company should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 in certain circumstances). We have reviewed the submitted information. We have also received correspondence from Vantage Learning.

As a preliminary matter, we note that you have only submitted the 2002 proposal for the Math Diagnostic Assessment Tool. To the extent the agency maintains the

requested 2003, 2004, and 2005 proposals for the Math Diagnostic Assessment Tool and the requested Scientific Diagnostic Tool, we assume such information has been released. If not, the agency must release this information 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).

With respect to the submitted 2002 proposal for the Math Diagnostic Assessment Tool, we note that 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). We received a letter from Vantage Learning dated May 17, 2005 indicating that the company would submit its arguments against disclosure to this office by June 2, 2005. As of the date of this letter, however, this office has not received comments from Vantage Learning explaining how the release of the submitted information will affect its proprietary interests. Thus, Vantage Learning has not demonstrated that any of the submitted information is proprietary for purposes of chapter 552 of the Government Code. *See* Gov't Code § 552.110; *see also, e.g.*, 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 (1990). Accordingly, the agency may not withhold any of the submitted information on the basis of any proprietary interest that Vantage Learning may have in the information. As such, the agency must release the submitted information to the requestor.

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); *Tex. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 227914

Enc. Submitted documents

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