



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2006

Mr. David A. Anderson  
General Counsel  
Texas Education Agency  
1702 North Congress Avenue  
Austin, Texas 78701-1494

OR2006-04737

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# 248447.

The Texas Education Agency (the "agency") received a request for the winning proposal and contract related to project number 701-05-17834. You state that you are releasing some of the requested information to the requestor. Although you make no arguments as to whether the remaining requested information is excepted from disclosure, you believe that the request may implicate the third party proprietary interests of Pearson Educational Measurement ("Pearson"). Accordingly, you inform us that, pursuant to section 552.305 of the Government Code, the agency notified Pearson of the request for information and of its right to submit arguments explaining why the requested information 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 note that the submitted information was the subject of a previous ruling issued by this office as Open Records Letter No. 2005-08232 (2005). Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the agency must continue to rely on our

decision in Open Records Letter No. 2005-08232 with respect to the submitted information.<sup>1</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

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); *Texas 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

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<sup>1</sup>The 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 Open Records Decision No. 673 (2001).

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 Office of the Attorney General 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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/er

Ref: ID# 248447

Enc. Submitted documents

c: Onvia  
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Mr. Michael R. Cooper  
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