ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 3, 2007

Mr. James Thomassen
Assistant General Counsel
Texas State Board of Medical Examiners
P.O. Box 2018
Austin, Texas 78768-2018

OR2007-12916

Dear Mr. Thomassen:

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# 291011.

The Texas Medical Board (the "board") received a request for copies of the complete proposal submissions from all bidders, including technical and cost information, received in response to the board's request for Offer No. 503-7-633, and copies of evaluation forms, tabulations, scoring sheets and reference check materials used in the evaluation process. You state you have released some information to the requestor. While you raise section 552.110 of the Government Code as a possible exception to disclosure for the remaining requested information, you make no arguments and take no position regarding the applicability of this exception. Instead, you state that the remaining requested information may be subject to third party proprietary interests. Pursuant to section 552.305 of the Government Code, you have notified LaserGrade, Pan – a TALX Company ("Pan"), and Pearson Vue ("Pearson") of the request and of the rights of these companies to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *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 to disclosure under the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note that when a governmental body asks this office to decide whether requested information is excepted from public disclosure, it must comply with the deadlines prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. If the governmental body fails to do so, the requested information is presumed to be public and must be released unless there is a compelling reason to withhold any of the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). This request for a decision presents issues with regard to the board's compliance with section 552.301. However, because third party interests are at stake, we need not determine whether the board has complied with section 552.301 in requesting this decision.

Next, we note that the submitted information pertaining to Pearson and Pan was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2007-11244 (2007) and 2007-11805 (2007). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the board must continue to rely on these rulings as previous determinations and withhold or release this information in accordance with Open Records Letter Nos. 2007-11244 and 2007-11805. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We now address the information not subject to Open Records Letter Nos. 2007-11244 and 2007-11805. 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). As of the date of this letter, this office has not received comments from LaserGrade explaining how the release of the submitted information will affect the company's proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of LaserGrade, and the board may not withhold any portion of the remaining submitted information on that basis. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

In summary, to the extent that the submitted information is encompassed by Open Records Letter Nos. 2007-11244 and 2007-11805, the board must continue to rely on these previous rulings. The remaining submitted information must be released 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).

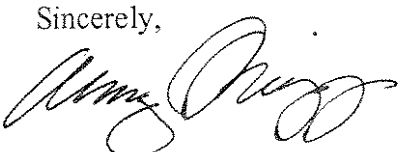
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 291011

Enc. Submitted documents

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