



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2008

Mr. W. Montgomery Meitler
Assistant Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2008-03633

Dear Mr. Meitler:

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# 305244.

The Texas Education Agency (the "agency") received a request for the title and sources of "any motion picture, film, or video" used by five specified online driver safety course providers. You state that you do not have information responsive to the requested source information.¹ You inform us that some of the requested information is the subject of a previous open records ruling. Although you take no position with respect to the submitted information, you indicate that it may contain proprietary information. You state that you have notified American Driver Improvement ("American"), Safety-USA Institute, L.L.C. ("Safety-USA"), Ticket Stop, and TrafficSchoolOnline.com of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *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 the applicability of

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

You inform us that the responsive information pertaining to Defensive Driver Online was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2003-6379 (2003). You state that there has been no change in the law, facts, and circumstances on which the previous ruling is based. We therefore conclude that the agency must dispose of the requested information pertaining to Defensive Driver Online in accordance with Open Records Letter No. 2003-6379. *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).

Next, 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 American, Safety-USA, Ticket Stop, or TrafficSchoolOnline.com explaining how the release of the submitted information will affect their 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 these companies. *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). Accordingly, the agency may not withhold any of the submitted information based on the proprietary interests of American, Safety-USA, Ticket Stop, or TrafficSchoolOnline.com.

In summary, the agency must continue to rely on Open Records Letter No.2003-6379 with respect to the requested information pertaining to Defensive Driver Online. The remaining submitted information must be released.

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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 305244

Enc. Submitted documents

c: Mr. Robert S
2813 Kickapoo Cavern Drive
Pflugerville, Texas 78660
(w/o enclosures)

Mr. Scott Owens
American Driver Improvement
13805 West Road, Suite 200
Houston, Texas 77041
(w/o enclosures)

Mr. David C. Bruce
Defensive Driver Online
2 Greenway Plaza, Suite 250
Houston, Texas 77046
(w/o enclosures)

Mr. John B. Johnston
Safety-USA Institute, L.L.C
P.O. Box 848
McKinney, Texas 75070
(w/o enclosures)

Ms. Michelle Pumphrey
Ticket Stop
335 Pennbright, Suite 104
Houston, Texas 77090
(w/o enclosures)

Mr. Steve Soldis
TrafficSchoolOnline.com
19 Old Courthouse Square #210
Santa Rosa, California 95404
(w/o enclosures)