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

OR2008-03638

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# 305245.

The Texas Education Agency (the "TEA") received a request for the entire course content guide for two specified online driver safety course providers. You claim that some of the requested information is excepted from disclosure under section 552.137 of the Government Code. You also contend that some of the requested information is not subject to the Act. Although you take no position with respect to the public availability of the remaining requested information, you state that its release may implicate the proprietary interests of Safety-USA Institute, L.L.C. ("Safety-USA") and Sense of Humor, Inc. ("Sense of Humor"). Accordingly, you have notified Safety-USA and Sense of Humor of the request and of these companies' opportunity to submit arguments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of an exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we address your argument that some of the submitted information is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer

programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in that decision and our review of the information at issue, we determine that the username and password contained in the submitted information do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released to the requestor.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Safety-USA nor Sense of Humor have submitted to this office any reasons explaining why the requested information should not be released. Therefore, Safety-USA and Sense of Humor have failed to provide us with any basis to conclude that these companies have a protected proprietary interest in any of the submitted information, and none of the information may be withheld on that basis. *See* 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).

You assert that the submitted information contains e-mail addresses that are excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential, providing the following:

> (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
>
> (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
>
> (c) Subsection (a) does not apply to an e-mail address:
>
> > (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

> (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
>
> (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
>
> (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.
>
> (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). Upon review, we determine that the e-mail addresses contained in the submitted documents are of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the TEA may not withhold any of the e-mail addresses contained in the submitted information under section 552.137 of the Government Code.

In summary, the username and password contained in the submitted information do not constitute public information under section 552.002 of the Government Code and need not be released. The remaining submitted information must be released to the requestor.

You also ask this office to issue a previous determination permitting the TEA to withhold e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

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,

Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 305245

Enc. Submitted documents

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

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

Mr. William Michael Sims
Sense of Humor, Inc.
7920 Glenview Drive
Richland Hills, Texas 76180
(w/o enclosures)