



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2010

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

OR2010-02670

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# 371038 (TEA PIR # 12276).

The Texas Education Agency ("TEA") received a request for "the completed applications, including graders notes, amendments and approval forms," of six specified new-educator preparation programs. You state that to the extent it exists, some of the requested information has been released. You take no position on the public availability of the submitted information. You believe, however, that the submitted information may implicate the proprietary interests of third parties. You inform us that the third parties concerned were notified of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> We received correspondence from an attorney for ACT-Houston ("ACT"). We have considered ACT's arguments and reviewed the submitted information.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be

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<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, only ACT has corresponded with this office. Thus, the other third parties that were notified have not demonstrated that any of their information is proprietary for the purposes of the Act. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, none of the submitted information may be withheld on the basis of any proprietary interests that the other third parties may have in the information.

We next note that some of the submitted information was the subject of a previous request to TEA, as a result of which this office issued Open Records Letter No. 2007-02313 (2007). In that ruling, we concluded that some of ACT's information must be withheld as trade secrets under section 552.110(a) of the Government Code. We are not aware of any change in the law, facts, and circumstances on which the previous ruling was based. We therefore conclude that TEA must dispose of the submitted information that pertains to ACT in accordance with Open Records Letter No. 2007-02313.<sup>2</sup> *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

We note that the rest of the submitted information includes personal e-mail addresses. Section 552.137 of the Government Code provides that "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 [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c).<sup>3</sup> *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that must be withheld under section 552.137, unless the owner of an e-mail address has affirmatively consented to its public disclosure.<sup>4</sup>

We also note that some of the remaining information may be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An

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<sup>2</sup>As we are able to make this determination, we need not address the arguments that we received from ACT.

<sup>3</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

<sup>4</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

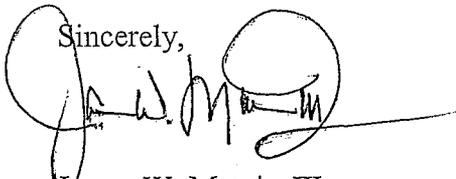
officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) TEA must dispose of the submitted information that pertains to ACT in accordance with Open Records Letter No. 2007-02313, and (2) TEA must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its disclosure. The rest of the submitted information must be released, but any information that is protected by copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large circular flourish on the left side.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 371038

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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