



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2010

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

OR2010-05325

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# 375852 (TEA PIR Nos. 12580, 12581, 12664).

The Texas Education Agency (the "agency") received three requests from three separate requestors for each requestor's respective company's evaluation and the winning proposal for RFP No. 701-10-025 for a Pre-Admission Content Test. One requestor additionally sought the proposals of all finalists for the bid. You state that you have released some of the requested information. Although you take no position with respect to the public availability of the submitted information, you indicate its release may implicate the proprietary interests of Edelman and Sherry Matthews ("Matthews"). Accordingly, you state the agency notified these third parties of the request and of each company's right to submit arguments to this office as to why their submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note that the agency did not submit Lyon Advertising's ("Lyon") evaluation to this office. Therefore, to the extent the agency maintained Lyon's evaluation on the date the agency received this request, we assume the agency has released it to the requestor from Lyon. If the agency has not released the evaluation, it must do so at this time. *See Gov't Code* § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply, it must release information as soon as possible).

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

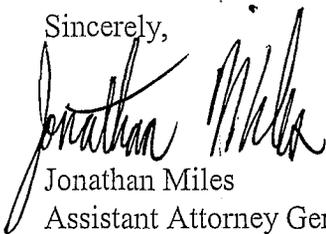
information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Edelman or Matthews explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests in its submitted information. *See id.* § 552.110; 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. Consequently, the agency may not withhold the submitted proposals on the basis of any proprietary interest the third parties may have in the information.

We note portions of the submitted information appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person 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 (1990). Accordingly, the submitted information must be released to the requestors 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 375852

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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