



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2010

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

OR2010-08120

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#381595 (TEA PIR# 12860).

The Texas Education Agency ("TEA") received a request for all documents pertaining to a criminal investigation conducted to determine the eligibility of the requestor to teach in the McAllen school district. You state you will release some of the responsive information to the requestor. You claim that the submitted information is privileged under Texas Rule of Civil Procedure 192.5. We have considered your argument and reviewed the submitted information.

Initially, we address TEA's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state and provide documentation showing that the requestor made a prior request for information on

March 2, 2010 for all records pertaining to TEA's criminal investigation to determine the requestor's eligibility for employment, including all information received by TEA from any criminal background contractors to obtain this information. TEA provides documentation of its response to this prior request, which states that when any case is closed the criminal history documents are destroyed and thus, it had no responsive information. We note that a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find that the submitted documents are responsive to the requestor's March 2, 2010 request for information. Consequently, we find that TEA failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. Although you raise Texas Rule of Civil Procedure 192.5 for the information at issue, a claim of attorney work-product privilege under Texas Rule of Civil Procedure 192.5 may be waived. *See* Open Records Decision No. 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, we conclude that TEA may not withhold any of the submitted information under Texas Rule of Civil Procedure 192.5. As you raise no further exceptions to disclosure, the information must be released.<sup>1</sup>

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

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<sup>1</sup>We note that the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests). Because such information is confidential with respect to the general public, if TEA receives another request for this information from a different requestor, TEA must again seek a ruling from this office.

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 'V. Burgess', with a long horizontal line extending to the right.

Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/jb

Ref: ID#381595

Enc. Submitted documents

c: Requestor  
(w/o enclosures)