



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 28, 2010

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

OR2010-19433

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# 404125 (TEA PIR# 14068).

The Texas Education Agency (the "agency") received a request for all bid proposals submitted in response to request for proposals 701-10-028, excluding the requestor's bid proposal. You state some of the requested information is subject to previous rulings from this office. Although you raise no exceptions to disclosure of the remaining submitted information, you indicate release of this information may implicate the proprietary interests of third parties. Thus, pursuant to section 552.305 of the Government Code, the agency has notified College Options Foundation, CollegiateZone Enterprises, The McGraw-Hill Companies ("McGraw-Hill), The Pulliam Group of Texas, and Revolution Prep of their right to submit arguments to this office explaining why their information should not be released. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 applicability of exception in certain circumstances). We have received comments from McGraw-Hill. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2010-08907 (2010) and 2010-09837 (2010). In Open Records Letter No. 2010-08907, this office determined the agency must withhold a portion of the requested information under section 552.110(b) of the Government Code and release the remaining information. In Open Records Letter No. 2010-09837, this office determined the requested information must be released, but any information protected by copyright must be released in accordance with copyright law. As we have no indication the law, facts, or circumstances on which the prior rulings were based have changed, the agency must continue to rely on Open Records Letter Nos. 2010-09837 and 2010-08907 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. *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). However, we will consider arguments for the information not subject to the previous determinations.

Next, we note 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, College Options Foundation, CollegiateZone Enterprises, The Pulliam Group of Texas, and Revolution Prep have not submitted to this office any reasons explaining why their submitted information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes proprietary information of these companies, and the agency may not withhold it based on the proprietary interests of these companies. *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.

McGraw-Hill raises section 552.110(b) of the Government Code, which protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6 (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). Upon review, we find McGraw-Hill has established that its proposed budget, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Accordingly, the agency must withhold the information we have marked under section 552.110(b) of the Government Code.

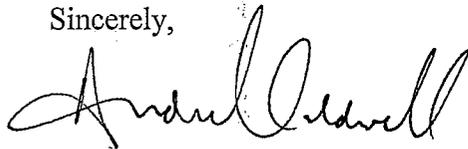
We note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). 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.

In summary, the agency must continue to rely on Open Records Letter Nos. 2010-09837 and 2010-08907 and withhold or release information in accordance with those rulings. The agency must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be released, but any copyrighted information 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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 404125

Enc. Submitted documents

c: Requestor  
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