



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2011

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

OR2011-03960

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# 412337 (TEA PIR# 14544).

The Texas Education Agency (the "TEA") received a request for proposals submitted in response to request for proposals number 701-10-028. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Profiles International, Inc. ("Profiles International"). Accordingly, you state you notified Profiles International of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, you state portions of the requested information were the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2010-19433 (2010), 2010-09837 (2010), and 2010-08907 (2010). You state there has been no change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the TEA must rely on Open Records Letter Nos. 2010-19433, 2010-09837, and 2010-08907 as previous determinations and withhold or release the identical information in accordance with these 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).

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) 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 Profiles International explaining why its information should not be released. Therefore, we have no basis to conclude Profiles International has a protected proprietary interest in its 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. Accordingly, the TEA may not withhold the submitted information on the basis of any proprietary interest Profiles International may have in the information.

Finally, we note some of the materials 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 TEA must rely on Open Records Letter Nos. 2010-19433, 2010-09837, and 2010-08907 as previous determinations and withhold or release the identical information in accordance with these rulings. The TEA must release the submitted information, but any information subject to copyright may be released only 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 412337

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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