



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 4, 2011

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

OR2011-13093A

Dear Mr. Meitler:

Our office issued Open Records Letter No. 2011-13093 (2011) on September 12, 2011. Since that date, you have provided new information that affects the facts on which this ruling was based. You inform us that your agency originally sent Skyward, Inc. (“Skyward”), and Texas Computer Cooperative (“TCC”) incorrect notifications regarding the request for information at issue. However, you state these third parties have now received the correct notifications regarding this request for their information. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on September 12, 2011. *See generally* Gov’t Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (“Act”)). This ruling was assigned ID# 437052.

The Texas Education Agency (the “agency”) received a request for a copy of the final agreements between the agency and Skyward and TCC regarding RFO No. 701-11-030. You state the agency will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you inform us release of this information may implicate the proprietary interests of Skyward and TCC. Accordingly, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See id.* § 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 considered the submitted information.

Initially, the agency acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov’t Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this

presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because third-party interests can provide a compelling reason to withhold information, we will consider whether any of the submitted information is excepted under the Act.

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. Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Skyward and TCC have not submitted comments to this office explaining why the information submitted by the agency should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in this 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 agency may not withhold any portion of the information it submitted for our review based upon the proprietary interests of Skyward or TCC. As no exceptions to disclosure are raised, the submitted information must be released.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 437052

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David P. Backus
Counsel for Texas Computer Cooperative
Underwood
P.O. Box 16197
Lubbock, Texas 79490
(w/o enclosures)

Mr. Scott Glinski
President
Skyward, Inc.
5233 Coye Drive
Stevens Point, Wisconsin 54481
(w/o enclosures)