



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2011

Mr. Gregory Dickenson  
Transactional Counsel  
Texas Guaranteed Student Loan Corporation  
P.O. Box 831000  
Round Rock, Texas 78683-3100

OR2011-18843

Dear Mr. Dickenson:

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# 439817.

The Texas Guaranteed Student Loan Corporation ("TG") received a request for (1) records indicating the appointment of the chairman of TG by the governor, (2) TG's Strategic Plan, (3) records indicating TG's ownership of other corporations, (4) records indicating the identities of the "TG family of companies", (5) the application of TG to the United States Department of Education regarding a specified solicitation of proposals, (6) minutes of TG board meetings during a specified time period, (7) records indicating the present number of employees by position and their salary and fringe benefit costs, (8) records indicating the number of employees by position on specified dates, (9) contracts with lobbyists during a specified time period, (10) records indicating states in which Education Assistance Services, Inc. ("EAS") operated during a specified time period, (11) records indicating the nature of the activities of EAS during the same time period, and (12) the most recent audited financial statements of TG and the most current unaudited financial statements of TG.<sup>1</sup> We

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<sup>1</sup>You inform us TG sought and received clarification from the requestor regarding portions of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear

understand you are releasing information responsive to categories 1, 3-4, 7-9, and 12 of the request, if such information exists.<sup>2</sup> You claim portions of the submitted information are not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under sections 552.104 and 552.110 of the Government Code.<sup>3</sup> You also state, and provided documentation, that you notified third parties EAS, Account Control Technology (“ACT”); CGI Technologies and Solutions Inc. (“CGI”); and Vangent, Inc. (“Vangent”); of the request for information and of their rights 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) (statutory predecessor of 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 received arguments from EAS. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.<sup>4</sup> We have received and considered comments from the requestor. *See Gov’t Code § 552.304* (interested party may submit comments stating why information should or should not be released).

First, we address your assertion that the information pertaining to EAS is not subject to the Act. The Act is applicable only to “public information.” *See id.* § 552.021. Section 552.002 of the Act defines public information as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Virtually all information that is in a governmental body’s physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see*

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or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>Although you raise section 552.116 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.

<sup>4</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

*also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You claim the information pertaining to EAS should not be subject to the Act because EAS is a separate, for-profit entity established by TG. You state EAS is a business corporation rather than a state agency or an entity performing a state function and, thus, is not subject to the Act. We note that EAS's brief, and the submitted contract between TG and EAS, state that EAS is a wholly owned subsidiary of TG. As you acknowledge, this office has determined TG is a governmental body subject to the Act. Consequently, any information TG possessed at the time the request for information was received that pertains to TG's official business is subject to the Act. While you assert TG "does not actually have possession, custody, or control of the documents, because TG is providing services to EAS and is not in possession of such documents as a matter of its own policy or business need," the provision of services by TG to EAS, TG's wholly owned subsidiary, would be within the official business of TG and, thus, would fall within the Act. Accordingly, we find the information in TG's possession pursuant to its work with EAS is subject to the Act.

We next note you have not submitted information responsive to categories 10 and 11 of the request. To the extent information responsive to this part of the request existed on the date TG received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from ACT, CGI, or Vangent explaining why their submitted information should not be released. Therefore, we have no basis to conclude ACT, CGI, or Vangent has a protected proprietary interest in the 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. Accordingly, TG may not withhold the submitted information on the basis of any proprietary interest ACT, CGI, or Vangent may have in the information.

You inform us Exhibit F consists of the minutes of public meetings of the TG's Board. The minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code

§§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act, such as sections 552.104 and 552.110, do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, TG must release Exhibit F in its entirety pursuant to section 551.022 of the Government Code. We address the arguments for the remaining submitted information.

We note TG raises section 552.110 of the Government Code. Section 552.110 is designed to protect the interests of third parties, not the interests of governmental bodies. Thus, we do not address TG's arguments under section 552.110 of the Government Code.

TG also raises section 552.104 of the Government Code for portions of the remaining information. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* ORD 514 at 2.

TG explains it is a marketplace competitor with regard to its bid with the United States Department of Education (the "DOE") regarding a specified solicitation of proposals. TG states it is competing with other guaranty agencies with its Voluntary Flexible Agreement ("VFA") proposal before the DOE. You inform us the DOE has "made it clear that only a few agencies can and will be selected to provide services in one of the particular areas, Collections and Claims Processing, which is also the most financially advantageous areas of endeavor under the proposals." Based on these representations, we find TG has legitimate marketplace interests in its bid with the Department of Education for purposes of section 552.104. TG asserts that release of its pricing information in Exhibit D would create potential harm to its interests in the marketplace and give an advantage to competing bidders by allowing them to understand TG's price structure in the bid. Further, you assert that the negotiation process for the VFA is lengthy and that if TG's competitors knew TG's pricing

for the VFA, they would be in a stronger position to undercut TG in the VFA negotiations. You inform us that the VFA awards are not set and “are based heavily on negotiation by the terms of the solicitation.” Upon review of the arguments and the information at issue, we conclude TG has sufficiently demonstrated that release of the information at issue would harm TG in a specific competitive situation. *See* ORD 593. Accordingly, TG may withhold the pricing information it seeks to withhold in Exhibit D under section 552.104 of the Government Code.

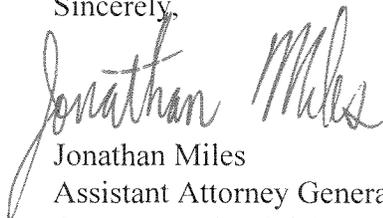
We note portions of the remaining information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection 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, TG must release Exhibit F in its entirety pursuant to section 551.022 of the Government Code. TG may withhold the pricing information it seeks to withhold in Exhibit D under section 552.104(a) 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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in dark ink and is positioned above the typed name and title.

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/agn

Ref: ID# 439817

Enc. Submitted documents

c: Requestor  
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