



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 3, 2012

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

OR2012-06610

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# 452919 (TEA PIR# 17080).

The Texas Education Agency (the "agency") received a request for all information in the agency's custody pertaining to two named hearing officers and a specified due process hearing docket number. You state you will release some of the requested information to the requestor and have made redactions pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> Although you take no position as to whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of the hearing officers. Accordingly, you have notified the hearing officers of the request and of their right to submit arguments to this office as to why

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

the requested information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially, you inform us the agency requested clarification of a portion of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). Accordingly, the agency has no obligation at this time to release any information that might be responsive to this portion of the request. However, if the agency receives clarification and wishes to withhold any of the information encompassed by the clarified request, you must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear 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).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from the hearing officers. Thus, the hearing officers have not demonstrated they have a protected proprietary interest in any of the submitted information. *See id.* §552.110(a)-(b); 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 the submitted information on the basis of any proprietary interests the hearing officers may have in the information. As no exceptions to disclosure have been raised, the agency must release the submitted information.

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 black ink, appearing to read 'Ben B', with a long horizontal flourish extending to the right.

Benjamin A. Bellomy  
Assistant Attorney General  
Open Records Division

BAB/bhf

Ref: ID# 452191

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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