



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2012

Ms. Sarah W. Langlois
Attorney for Harris County Department of Education
Rogers, Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2012-16829

Dear Ms. Langlois:

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# 468727.

The Harris County Department of Education (the "department"), which you represent, received a request for (1) contracts between the department and Phonoscope, (2) payments made to Phonoscope for goods and services, and (3) itemized expenses paid to Phonoscope, each during a specified time period.¹ You state the department has no information responsive to part three of the request.² You further state some information will be released to the requestor upon response to a cost estimate. Although the department takes no position

¹You state, and provide documentation showing, the department sought and received clarification of the request. See Gov't Code § 552.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding 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).

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990).

regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Phonoscope. Accordingly, you provide documentation showing you have notified Phonoscope of the request and its right to submit arguments to this office. *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.

We note 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 ruling, we have not received comments from Phonoscope. Thus, we have no basis to conclude Phonoscope has 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 department may not withhold any of the information at issue on the basis of any proprietary interest Phonoscope may have in the information. As no exceptions to disclosure are raised for the submitted information, it must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 468727

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Lee Cook
Phonoscope
4106 Westline Drive
Houston, Texas 77036
(w/o enclosures)