



August 24, 1999

Mr. David Anderson
Chief Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR99-2385

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125981.

The Texas Education Agency ("TEA") received a request for information identifying the individuals who wrote the 1998 and 1999 TAAS test questions. You relate "neither TEA nor Harcourt Brace [the contractor] would have documents or be able to furnish information as to which individuals wrote the 1998 and 1999 TAAS test questions." Harcourt Brace argues that the requested information is not public information subject to the disclosure provisions of the Public Information Act. Alternatively, both TEA and Harcourt Brace assert that the information is excepted from disclosure by sections 552.101, 552.102, 552.110 and 552.117 of the Government Code.

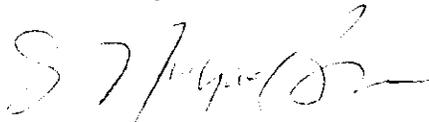
Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) *for a governmental body and the governmental body owns the information or has a right of access to it.*" [Emphasis added]. Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. See Open Records Decision Nos. 462 (1987); cf. Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Public Information Act are: 1) information

collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Public Information Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 at 2 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 at 3 (1989).

TEA indicates that it does not possess or maintain this information. Although the requested information may have been prepared and relates to TEA's official business, it does not appear that TEA has a right of access to this information. Based on your arguments, we conclude that the requested information is not public information subject to disclosure. As this determination is dispositive of this request, we do not address your arguments raised under other provisions of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 125981

cc: Ms. Jeanne Donovan
Texas Education Consumers Association
5208 Starry Court
Fort Worth, Texas 76123