



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2005

Ms. Loretta DeHay
General Counsel
Texas Real Estate Commission
P. O. Box 12188
Austin, Texas 78711-2188

OR2005-08461

Dear Ms. DeHay:

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# 232411.

The Texas Real Estate Commission (the "commission") received a request for information regarding the actual course work of a specific home inspection program. You state that you will release some of the responsive information. You claim that the submitted course materials may contain proprietary information. Pursuant to section 552.305 of the Government Code, you have notified Texas A&M University-Commerce ("university") and Continuing Education for Licensing, Inc. ("CELP") of the request and of each party's right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances).* We have received correspondence from CELI. We have considered the submitted argument and reviewed the submitted information.

Initially, we note that as of the date of this letter, this office has not received comments from the university explaining how the release of the submitted information will affect its interest. *See Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).* Thus, we have no basis to conclude that the release of any portion of the submitted information relating to the university would implicate

its interest. Accordingly, the commission may not withhold any portion of the submitted information on the basis of any interest that the university may have in the information.

Although CELI does not raise any exceptions to disclosure, CELI claims that the submitted information for the home inspection course is copyrighted material. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, 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. *See* Open Records Decision No. 550 (1990). Accordingly, the submitted information must be released in accordance with copyright law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

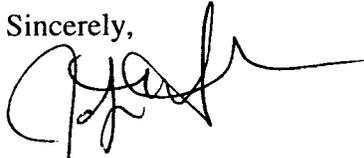
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jaelyn N. Thompson', with a long horizontal flourish extending to the right.

Jaelyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 232411

Enc. Submitted documents

c: Alan R. Austin
P. O. Box 891333
Houston, Texas 77289
(w/o enclosures)