



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 22, 2006

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

OR2006-05351

Dear Mr. Anderson:

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# 248440.

The Texas Education Agency (the "agency") received a request for information pertaining to RFQ# 701-06-002. You state that you have released some of the requested information. Although you take no position regarding the public availability of the remaining information, you state that release of the submitted information may implicate third party proprietary interests. Thus, pursuant to section 552.305 of the Government Code, you have notified the following entities of the request and each entity's right to submit arguments to this office: Compass Learning, Inc. ("Compass"); Glencoe/McGraw-Hill ("Glencoe"); Harcourt Achieve, Inc. ("Harcourt Achieve"); Harcourt School Publishers ("Harcourt School"); Pearson Digital Learning, Inc. ("Pearson"); the Region 4 Education Service Center (the "center"); Riverdeep, L.L.C. ("Riverdeep"); Saxon Publishing ("Saxon"); Scholastic, Inc. ("Scholastic"); Scientific Learning Corporation ("Scientific"); Steck-Vaughn; the Texas A&M Research Foundation (the "foundation"); Tom Snyder Productions, Inc. ("Snyder"); and Voyager Expanded Learning ("Voyager") of the request and of each company'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 the Act in

certain circumstances). We have reviewed the submitted information and considered all submitted arguments.

Initially, we note, and you acknowledge, that the agency failed to comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(a), (b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). In this instance, because you contend third party interests are at issue, we will address the arguments for non-disclosure.

First, however, we note that 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* Gov't Code § 552.305(d)(2)(B). Compass and Harcourt School have responded to the notice and state that they do not object to the release of their information; therefore, the submitted information pertaining to these companies may not be withheld as proprietary information. As of the date of this letter, Glencoe, Harcourt Achieve, Pearson, the center, Saxon, Steck-Vaughn, the foundation, Snyder, and Voyager have not submitted to this office any reasons explaining why their information should not be released. We thus have no basis for concluding that the release of any portion of the submitted information pertaining to these entities would harm their proprietary interests. *See, e.g., 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). Accordingly, we conclude that the agency may not withhold any portion of the submitted information on the basis of any proprietary interest Glencoe, Harcourt Achieve, Pearson, the center, Saxon, Steck-Vaughn, the foundation, Snyder, or Voyager may have in the information.

We turn next to the arguments submitted by interested third parties Riverdeep, Scholastic, and Scientific. We note that Riverdeep seeks to withhold information that the agency has not submitted to this office for review.<sup>1</sup> This ruling does not address the arguments submitted by Riverdeep pertaining to information that has not been submitted for our review

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<sup>1</sup> Specifically, Riverdeep seeks to withhold the entirety of its proposal. The agency has submitted only Riverdeep's cost proposal.

by the agency. *See* Gov't Code § 552.301(e)(1)(D) (governmental body seeking attorney general's opinion under Act must submit copy or representative samples of specific information requested).

Riverdeep, Scholastic, and Scientific claim that their information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b).

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Upon review of the information at issue and the arguments submitted by Riverdeep, Scholastic, and Scientific, we find these companies have demonstrated that the information each seeks to withhold is excepted from disclosure under section 552.110(b). Accordingly, the agency must withhold the submitted information pertaining to these companies. As our ruling on this issue is dispositive, we need not address the remaining submitted arguments.

We note, however, that some of the remaining information includes notice of copyright protection. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990). Accordingly, in releasing the remaining information the agency must release copyrighted information only 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).

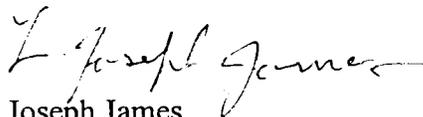
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/sdk

Ref: ID# 248440

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