



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2008

Ms. Carrie Galatas
General Counsel
Conroe Independent School District
3205 West Davis Street
Conroe, Texas 77304-2098

OR2008-11040

Dear Ms. Galatas:

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# 318683.

The Conroe Independent School District (the "district") received a request for copies of raw data from tests performed by the district on the requestor's daughter. You inform us that you have made the requested information available to the requestor for inspection; however, you believe that the district is not authorized under the copyright law to provide copies of the requested information to the requestor. You state, and provide documentation showing, that Pearson Assessment ("Pearson") and Pro-Ed Inc. ("Pro-Ed"), the two companies that hold the copyrights to the requested information, have requested that their tests not be released.¹ We have considered your arguments and reviewed the submitted information.² We have also

¹Further, you inform us, and provide documentation showing, that you notified Pearson and Pro-Ed of the district's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We note, however, that as of the date of this letter, neither Pearson nor Pro-Ed have submitted comments to this office.

²You state that the district has redacted information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. We note that our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made. Therefore, we will not address the applicability of FERPA to any of the submitted information, except to note that parents have a right of access to their own child's education records. *See* 20 U.S.C. § 1232g(a)(1)(A).

considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the district did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301(e) provides that a governmental body must submit to this office not later than the fifteenth business day after the date of its receipt of the request for information, among other things, a copy of the written request for information and a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date. *See id.* § 552.301(e)(1)(B), (C). In requesting this decision, you did not submit a copy of the original request for information.³ You also failed to provide this office with a signed statement of the exact date on which the district received the request or evidence sufficient to establish that date. Thus, because the district did not comply with section 552.301, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because third party interests are at stake in this instance, we will address your argument.

We agree that the submitted information is protected by copyright. A governmental body must permit inspection of copyrighted materials, unless an exception to disclosure is applicable to the information. *See* Attorney General Opinion JM-672 (1987). In doing so, however, the governmental body also must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Id.* However, 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 at 8-9 (1990). Accordingly, the submitted information must be released to the requestor in accordance with the 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days.

³Our description of the request is based on other information that you provided in requesting this decision.

Id. § 552.353(b)(3). If the governmental body does not file suit over 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).

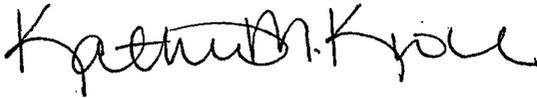
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 318683

Enc. Submitted documents

c: Ms. Laura Winge
Pearson Assessments
5601 Green Valley Drive
Bloomington, Minnesota 55437
(w/o enclosures)

Ms. Maria Meng
Pro-Ed Inc.
8700 Shoal Creek Boulevard
Austin, Texas 78757-6897
(w/o enclosures)