



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2009

Mr. W. Montgomery Meitler  
Assistant Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2009-03615

Dear Mr. Meitler:

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# 337758 (TEA PIR# 10526).

The Texas Education Agency (the "agency") received a request for the instructor development curriculum for all public and private driving schools in Texas.<sup>1</sup> You state that the agency does not have information responsive to the request for curriculum for public driving schools.<sup>2</sup> You state that some of the requested information is subject to previous rulings from this office. You claim that a portion of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Although you take no position with regard to the remaining submitted information, you state that it may implicate the proprietary interests of seventeen third parties.<sup>3</sup> Pursuant to section 552.305 of the

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<sup>1</sup>The agency states it sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>The third parties are as follows: A-1 Driving Academy, All-Star Driving School Inc., Classic Driving School Inc., Courtesy Driving School - North/West Inc., Island Driving School, Cypress Driving School LLC, Trinity Driving School, Driver Training Center, Rio Grande Defensive Driving School, Automatic Driving School, A O.K. Driving School Inc., Cazares Defensive Driving School, Central Park Driving School, Gregory's Driving School Inc., Safe-Way Driving Centre, Austin Driving School, and Collision-Free Driver Ed.

Government Code, you state that you notified these third parties of the request and of their 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 arguments from the representatives of Gregory's Driving School, Inc. ("Gregory"), Safe-Way Driving Centre ("Safe-Way"), Austin Driving School ("Austin"), and Collision-Free Driver Ed ("Collision-Free").<sup>4</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, you state that some of the requested information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2008-09110 (2008) and 2008-15903 (2008). In Open Records Letter No. 2008-09110, we determined the agency must withhold Driver Education Service's teacher preparation course materials pursuant to section 552.110(a) of the Government Code and must withhold the information we marked under section 552.130 of the Government Code. We also determined the agency must release the remaining information at issue in that ruling, but any copyrighted material must be released in accordance with copyright law. In Open Records Letter No. 2008-15903, we determined the agency must withhold portions of El Paso Northeast Driving School's information pursuant to section 552.110(a) of the Government Code. We also determined the agency must release the remaining information at issue in that ruling, but any copyrighted material must be released in accordance with copyright law. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, the agency must continue to rely on those rulings as previous determinations and withhold or release the information we previously ruled upon in accordance with Open Records Letter Nos. 2008-09110 and 2008-15903.<sup>5</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address the submitted arguments for the remaining information not subject to the previous determinations.

Next, 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 requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has

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<sup>4</sup>Although Collision-Free raises section 552.101 of the Government Code, it does not present any arguments against disclosure under that section. We note this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2000), 575 at 2 (1990).

<sup>5</sup>As our ruling is dispositive with respect to this information, we need not address your argument under section 552.130 of the Government Code for this information.

only received comments from Gregory, Safe-Way, Austin, and Collision-Free regarding how the release of the submitted information will affect their proprietary interests. Thus, we have no basis to conclude that the release of any portion of the other third parties' submitted information would implicate their proprietary interests. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the agency may not withhold any portion of the submitted information on the basis of any proprietary interest the third parties who did not submit comments to this office may have in the information.

Collision-Free raises section 552.104 of the Government Code, which excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. We note, however, that section 552.104 only protects the interests of a governmental body and is not designed to protect the interests of private parties that submit information to a governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). In this instance, the agency has not argued that the release of any portion of the submitted information would harm its interests in a particular competitive situation under section 552.104. Because the agency has not submitted any arguments under section 552.104, we conclude that the agency may not withhold any portion of the curriculum submitted by Collision-Free under section 552.104 of the Government Code.

Collision-Free, Gregory, Safe-Way, and Austin all argue that the submitted information relating to them is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information the disclosure of which 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(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is:~~

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates

or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>6</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

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* ORD 661 at 5-6.

Collision-Free, Gregory, Safe-Way, and Austin all contend that their submitted curricula are trade secrets excepted under section 552.110(a). Having considered these third parties’ arguments, we conclude that Collision-Free, Gregory, Safe-Way, and Austin have failed to demonstrate that any portion of their information fits within the definition of a trade secret. Collision-Free, Gregory, Safe-Way, and Austin have also not sufficiently established any of the trade secret factors with respect to any of the information in their curricula. Thus, none

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<sup>6</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

of Collision-Free's, Gregory's, Safe-Way's, and Austin's information at issue may be withheld under section 552.110(a) of the Government Code.

Both Collision-Free and Austin contend that their curricula are excepted under section 552.110(b). Upon review of Collision-Free's and Austin's arguments and their information, we find that Collision-Free and Austin have made only conclusory allegations that the release of their curricula would result in substantial damage to each company's competitive position. Thus, Collision-Free and Austin have not demonstrated that substantial competitive injury would result from the release of their curricula. *See id.* Accordingly, none of Collision-Free's and Austin's information may be withheld under section 552.110(b).

The agency claims that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state is excepted from public disclosure. *See Gov't Code* § 552.130(a)(1)-(2). We note that some of the information you have marked under section 552.130 does not consist of authentic Texas driver's license numbers but instead consists of sample driver's license numbers. Sample driver's license numbers may not be withheld under section 552.130. As no further exceptions against their disclosure are raised, the agency must release the sample driver's license numbers you have marked. We agree however, that the agency must withhold the remaining information you have marked in the submitted information, which consists of actual Texas driver's license numbers.

We note some of the remaining information is protected by copyright. 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 copyrighted materials 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).*

In summary, the agency must continue to rely to Open Records Letter Nos. 2008-09110 and 2008-15903 and withhold or release the information in accordance with that ruling. The agency must release the sample driver's license numbers you have marked but must withhold the remaining information you have marked under section 552.130 of the Government Code. The remaining information must be released, in accordance with copyright law.

You also ask this office to issue a previous determination permitting the agency to withhold driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting a ruling from our office under the Act. *See Gov't Code* § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time. Rather, 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 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](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 at (512) 475-2497.

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 337758

Enc: Submitted documents

cc: Requestor  
(w/o enclosures)

c: Ms. Patricia O. Alvarez  
The Alvarez Law Firm  
415 Shiloh Drive, Suite A  
Laredo, Texas 78045  
(w/o enclosures)

Mr. Fowler Gene Walker  
Safe-Way Driving Centre  
9219 Katy Freeway  
Houston, Texas 77024  
(w/o enclosures)

Mr. Richard O. Renya  
Austin Driving School  
2110 Slaughter Lane, Suite 132  
Austin, Texas 78748  
(w/o enclosures)

Mr. Patrick L. Barrett  
Collision-Free Driver Ed  
5000 Katy Mills Circle, #453  
Katy, Texas 77494  
(w/o enclosures)

Ms. Sandra Broyles  
A-1 Driving Academy, Inc.  
4612 Judson Road  
Longview, Texas 75605  
(w/o enclosures)

Mr. Michael Wansey  
Rio Grande Defensive Driving School  
3317 North Trosper  
Mission, Texas 78572  
(w/o enclosures)

Mr. Buman L. Ginsberg  
All-Star Driving School, Inc.  
12300 Inwood Road, #106  
Dallas, Texas 75244  
(w/o enclosures)

Ms. Carey Willingham  
Mr. Brian J. Weast  
Automatic Driving School  
1331 Highway 80, #17  
Mesquite, Texas 75150  
(w/o enclosures)

Ms. Misha Allen  
Classic Driving School, Inc.  
2220 Coit Road, Suite 400  
Plano, Texas 75075  
(w/o enclosures)

Ms. Paula J. Adams  
A. OK Driving School, Inc.  
1433 South 14<sup>th</sup> Street  
Abilene, Texas 79602  
(w/o enclosures)

Mr. Ronald D. DeWalt  
Ms. Dorothy E. DeWalt  
Island Driving School  
P.O. Box 1637-C  
Alvin, Texas 77512  
(w/o enclosures)

Ms. Mary Gregory Fox  
Gregory's Driving School, Inc.  
4217 Marcella Avenue  
Laredo, Texas 78041  
(w/o enclosures)

Mr. Jeff Lawrence Adams  
Cypress Driving School, L.L.C.  
8660 Highway 6 North  
Houston, Texas 77095  
(w/o enclosures)

Ms. Aida G. Martinez  
Cazares Defensive Driving School  
1700 North 10<sup>th</sup> Street, Suite I  
McAllen, Texas 78501  
(w/o enclosures)

Ms. Rita C. Hunter  
Trinity Driving School  
P.O. Box 6031  
Kingsville, Texas 78363  
(w/o enclosures)

Mr. Robert Louis Zaldivar  
Central Park Driving School  
7115 Blanco Road, Suite 114  
San Antonio, Texas 78216-5045  
(w/o enclosures)

Mr. Thomas Darrell Reed  
Driver Training Center  
P.O. Box 1012  
West Columbia, Texas 77486  
(w/o enclosures)

Mr. Steven Trimble  
Courtesy Driving School North/West, Inc.  
21924 Kingsland Boulevard  
Katy, Texas 77450  
(w/o enclosures)