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August 1, 2025

Tamara Smith, Chief
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

Re: REQUEST FOR OAG RULING: THECB PIR# 2025-114

Dear Ms. Smith,

The Texas Higher Education Coordinating Board (THECB) received the attached and above-referenced request for public information on July 18, 2025, which seeks various communications and proposals submitted to THECB as proposals for consideration from Education Resource Centers, hereinafter "PIR". The PIR is attached as Exhibit 1.

THECB submits this request for an Attorney General ruling, within 10 business days of receiving the PIR. In addition, the THECB is providing written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, pursuant to Tex. Gov't Code §552.301.

THECB seeks to withhold responsive documents from the requestor that are excepted from disclosure under the Public Information Act (PIA) and/or confidential by law under the grounds set forth below:

Under Tex. Gov't Code §552.107, Attorney-Client Privilege, information should be excepted from disclosure to protect the frank and open discussion among agency staff, in furtherance of THECB's policy considerations and mission. Additionally, communication between THECB employees and THECB counsel can be excepted under Texas common law to protect the attorney-client privilege. The responsive information at issue includes internal attorney-client communications related to THECB's work beyond mere factual information or routine administrative matters in that staff communicated seeking legal advice and legal review of the proposals at issue under this PIR. Further, the communication at issue is among and between the agency's staff and legal counsel include counsel's advice and legal implications that are beyond facts and routine administrative matters. This privilege is recognized by Texas law as compelling in that "the privilege shields confidential information from third parties whose litigation or business interests are adverse to the public's interests, promotes a culture that incentivizes governmental bodies to seek legal advice, and allows the free flow of information between attorney and client without fear of compelled disclosure." *Paxton v. City of Dallas*, 509 S.W.3d 247, 265-265 (Tex. 2017). As such, the responsive material attached as Exhibit 2, as marked, should be excepted from disclosure.

In addition, THECB has identified responsive information that implicates third party's proprietary interests under Tex. Gov't Code §552.305. On August 1, 2025, THECB provided notice to the third parties whose information was subject to the request. THECB submits this request for a letter ruling as to whether this information should be released. THECB does not take a position on whether privilege or confidentiality applies to any information that may be identified by the third party. THECB notes that protection of a third-party's proprietary information is a compelling reason to withhold information for which a timely request was made.

THECB will produce any information and documents that are responsive and not potentially confidential or exempt from disclosure to the requestor in a timely manner, if any.

Please note that this PIR is similar to prior PIR 2025-108, submitted by THECB to your office on July 14, 2025. Some of the information responsive to this new request was already provided to your office with the request for ruling on PIR 2025-108. THECB is not attaching the duplicative information and will release or withhold it in accordance with the ruling on PIR 2025-108.

By copy of this letter, the requestor and third parties are advised of THECB's request for a letter ruling.

The requestor is copied as a recipient of this brief, as required by Tex. Gov't Code §552.301(e-1), excluding attachments or a representative sample, and thus advised of all the legal bases upon which THECB seeks to withhold confidential information responsive to the request.

Please contact me if you have any questions. Thank you for your attention to this matter.

Regards,

Nina Wiggins
Assistant General Counsel
Nina.wiggins@highered.texas.gov

Enclosures: Copy of request for public information; Tex. Gov't Code §552.305. Notices; Third-Party Documents

cc:

Requestor: Texas Scorecard and Robert Montoya
Email (via GovQA): rmontoya@texasscorecard.com
888-410-1836 ext. 710
(without enclosures)

Third-Parties:

Data 10 & Ext 1 (UH 060)

University of Houston, Education Research Center
Dr. Toni Templeton, Education Research Center
tbtemple@cougarnet.uh.edu
Dr. Fiza Mairaj, Education Research Center
fmairaj@cougarnet.uh.edu
Dr. Rhoda Freelon, College of Education¹
rfeelon@cougarnet.uh.edu

(with enclosures)

Data 2 (UTD 170)

Briana Ballis, University of California, Merced
bballis@ucmerced.edu
Derek Rury, University of Chicago²
Che Sun, University of California, Davis
ucsun@ucdavis.edu

(with enclosures)

¹ THECB could not locate an email address for Dr. Rhoda Freelon but followed the email structure of other staff at the University of Houston and devised the email as shown in attempting to reach her.

² THECB could not locate an email address for Derek Rury. <https://harris.uchicago.edu/directory/derek-rury>