



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 21, 1995

Mr. Bruce W. Collins  
Ms. Sharon J. Shumway  
Carrington, Coleman, Sloman & Blumenthal  
200 Crescent Court, Suite 1500  
Dallas, Texas 75201

OR95-1588

Dear Mr. Collins and Ms. Shumway:

On October 26, 1994, the Austin Independent School District (the "district") received an open records request for various records relating to the district's search for a new superintendent.

As attorneys representing the search firm hired by the district to assist it in its search for a new superintendent, you have submitted arguments to this office within the ten day time period as to why certain of the records at issue generated and currently held by the search firm are excepted from required public disclosure. *See* Open Records Decision No. 518 (1989). You contend that because the search firm has acted as an agent of the district in attracting and screening applicants, it is an "arm" of the district and therefore has standing to request an open records decision and raise exceptions to disclosure on behalf of the district. To date, the district has not requested an open records decision with regard to the requested information.

We do not doubt that the search firm has acted as an agent of the district for purposes of attracting and screening applicants for the position of school superintendent. *See* Open Records Decision No. 585 (1991). However, you have not demonstrated to this office that the search firm is authorized to act as an agent for the district with respect to the district's responsibilities under the Open Records Act.<sup>1</sup> *Compare with* Open Records Decision No. 576 (1990) (pursuant to terms of contract, comptroller of public accounts

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<sup>1</sup>In fact, Mr. William Bingham, attorney for the district, informed a member of our staff that the district never requested the search firm to request an open records decision on the district's behalf.

may act as agent of Alcoholic Beverage Commission for purpose of receiving open records requests for commission records held by comptroller, but not for requesting open records decision from attorney general on behalf of commission). Absent express authority to request a decision on behalf of the district, we cannot deem your request for an open records decision as one properly made pursuant to section 552.301 of the Government Code.<sup>2</sup>

We further note that your request cannot be deemed as one properly made pursuant to section 552.305 of the Government Code. Section 552.305 provides:

(a) In a case in which information is requested under this chapter and a third party's privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, *a governmental body may decline to release the information for the purpose of requesting an attorney general decision.*

(b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

(c) The governmental body may, but is not required to, submit its reasons why the information should be withheld or released. [Emphasis added.]

In this instance, no "governmental body" has requested an open records decision in accordance with section 552.305(a). In Open Records Decision No. 542 (1990) 3, this office concluded that the statutory predecessor to section 552.305 "does not provide third parties with standing to request attorney general opinions under section [552.301]." Because the district has not requested an open records decision, we cannot consider your arguments for withholding the records at issue.

Sections 552.301 - 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. The district failed to request a decision within the ten days required by section 552.301(a) of the Government Code. When a governmental body fails to request a

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<sup>2</sup>The Seventy-fourth Legislature significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. ch. 1035, § 1, 1995 Tex. Sess. Law Serv. 5127 (Vernon). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made after September 1, 1995.

decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.-Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.-Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. See *Hancock*, S.W.2d 797 at 381.

Because the district has not requested an open records decision regarding the records currently held by the search firm, it has waived the act's discretionary exceptions to required public disclosure. Neither you nor the district have shown compelling reasons why the information at issue should not be released. All of the information is therefore presumed to be public and subject to required public disclosure.<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/RWP/rho

Ref: ID# 30237

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<sup>3</sup>You state that the search firm possesses no records that list the telephone calls it made during the search other than its long distance telephone bills and contends that it would be "virtually impossible" to identify the telephone numbers it called during the search from those bills. This office does not doubt, however, that the search firm possesses the telephone numbers of each of the candidates it contacted during the search. Because the district is entitled to all of the information the search firm collected during the search, notwithstanding any terms of the contract between the district and the search firm specifying otherwise, see Open Records Decision No. 585 (1991), the search firm must make a good faith effort to identify the telephone numbers in the billing statements with those of the candidates it called during the search.

Enclosures: Submitted documents

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