



September 11, 2001

Ms. Constance Y. Singleton
Attorney for Heights Charter School
215 Bayland Avenue
Houston, Texas 77009

OR2001-4042

Dear Ms. Singleton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151828.

The Heights Charter School (the "school"), which you represent, received a request for eight categories of information. You state that you have advised the requestor that records concerning "current certifications for any teacher" are available for inspection. You indicate that you do not have information regarding "purchases of playground equipment."¹ You claim that the school is not a "governmental body" for purposes of the Public Information Act (the "Act"), and that the school is therefore not subject to the requirements of the Act. You also claim that the requested information is not public information as defined by section 552.002(a) of the Act. In the alternative, you claim that some of the requested information is excepted from disclosure under section 552.110 of the Government Code. We have considered your arguments and the claimed exception.

We first address your claim that the school is not a governmental body subject to the Act. Under section 12.105(b) of the Education Code, open-enrollment charter schools are governmental bodies for purposes of the Act and are subject to the Act's requirements relating to a school district, school board, or students. Furthermore, a governmental body includes "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." See Gov't Code § 552.003(1)(A)(x). The receipt of public funds for the general support of the activities of a private organization brings that organization within the definition of a "governmental body" unless the public funds are paid in exchange for a measurable amount of service as would be expected in a typical arms-length transaction. Open Records Decision No. 228 (1979); see also Attorney General Opinion JM-821 (1987).

¹The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

You inform this office that the school is an open-enrollment charter school. You also submit to this office the school's "Contract for Charter," which refers to the school as an open-enrollment charter school. You further inform this office that the school receives public funds pursuant to a contract with the Texas State Board of Education and that certain of these funds are for the general support of the school. Therefore, we conclude that the school is a "governmental body" for purposes of the Act and is subject to the Act's requirements.

You also argue that the requested information is not "public information" as defined by section 552.002(a) of the Government Code. Under the Act, the public generally has a right of access to information collected, assembled, or maintained by a governmental body in connection with the transaction of official business. *See* Gov't Code §§ 552.002, .021. Pursuant to section 552.301(e)(1) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You did not state any reasons why the exception you claim applies to the requested information. Further, you did not submit any of the requested information for our review.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the responsive information, we have no basis for determining whether a compelling reason exists for withholding it. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services Commission 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 151828

Enc: Submitted documents

c: Mr. Wayne Dolcefino
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(w/o enclosures)