



April 26, 2002

Mr. Robert E. Luna  
Law Offices of Robert E. Luna  
4411 North Central Expressway  
Dallas, Texas 75205

OR2002-2159

Dear Mr. Luna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161217.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for information relating to a scholarship program. You sought clarification of the request from the requestor, and you have submitted a copy of the requestor's written response. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body). You state that the district will release documents responsive to the amended request that belong to the district. You claim, however, that the submitted information belongs to the Carrollton-Farmers Branch Independent School District Educational Foundation (the "foundation"). You inform us that the foundation is an independent nonprofit corporation and request a decision from this office as to whether the foundation's documents are public information for the purposes of the Public Information Act (the "Act"). We have considered your claims and reviewed the submitted information. We have also considered the additional information you have submitted. *See* Gov't Code § 552.303(b), (c).

The Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. This section defines "governmental body" as an entity that spends or is supported in whole or in part by public funds. "Public funds" means funds of the state or of a governmental subdivision of the state. Gov't Code § 552.003(5). An entity receiving public funds is a governmental body under the Act unless its relationship with the

governmental body imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Open Records Decision No. 602 (1992) (Dallas Museum of Art was governmental body to the extent that it received support from City of Dallas and State of Texas); *see also* Open Records Decision No. 228 (1979) (private, nonprofit corporation, with purpose of promoting the interests of the area, that received general support from City of Fort Worth was governmental body).

In Attorney General Opinion MW-373 (1981), this office examined the University of Texas Law School Foundation (the “UT Law Foundation”), a nonprofit corporation that solicits donations and expends funds to benefit the University of Texas Law School. This office noted that the university supports the UT Law Foundation by providing office space, utilities and telephone, reasonable use of equipment, and assistance of university personnel. *See* Attorney General Opinion MW-373 (1981) at 10-11. The opinion noted that the purpose of the UT Law Foundation is to raise funds and provide resources for the benefit of the university, and considered that the provision of office space and other assistance enhances the cost effectiveness of operating the UT Law Foundation. Further, the opinion noted that the university retains control over the relationship of the UT Law Foundation and the university through the authority of the university board of regents to control the use of university property. *Id.* Thus, since the UT Law Foundation receives general support from the university, and the university is financed by public funds, the UT Law Foundation is a governmental body for purposes of the statutory predecessor of the Act. Therefore, the UT Law Foundation’s records relating to the activities supported by public funds are subject to public disclosure. *Id.*

In the present case, the articles of incorporation of the foundation, which you have submitted for our review, provide that “the primary purpose of the Corporation shall be the assistance, development, and maintenance of charitable, educational, or scientific programs and activities for the enhancement of education provided through the public school system of the Carrollton-Farmers Branch Independent School District.” You explain that the foundation is a private, nonprofit corporation that receives no funds from the district. You do state, however, that the district provides free office space within the district’s administration building for the storage of foundation financial records, letterhead, brochures, and other supplies. Further, you inform us that district personnel perform some clerical support for the foundation, and that the district provides support in the form of computer use and photocopying to the foundation. Based on our review of the submitted information, we determine that the purpose of the foundation is to raise funds and provide resources for the benefit of the district. We also determine that the district supports the effective operation of the foundation. Thus, we determine that by accepting free office space and other administrative support, the foundation is a “governmental body” for purposes of the Act. *See* Open Records Decision No. 602 at 5 (1992). Accordingly, the records of the foundation are public records subject to the Act. *See* Gov’t Code § 552.002. As you have raised no

exceptions to public disclosure, we conclude that the submitted information must be released to the requestor. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read 'DRS', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/sdk

Ref: ID# 161217

Enc: Submitted documents

c: Mr. Robert Anthony Michael  
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(w/o enclosures)