



May 13, 2002

Mr. Therold I. Farmer
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2002-2534

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162815.

The Bastrop Independent School District (the "district"), which you represent, received a request for information regarding an after-school basketball program. You state that some responsive information has been released to the requestor. You also state that to the extent the responsive records contained student identifying information, you have redacted that information in accordance with the federal Family Educational Rights and Privacy Act ("FERPA"). *See* Open Records Decision No. 634 (1995) (educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions). You claim that the remaining information, concerning financial transactions of the program before the program became district-sponsored in 1997, is excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code. You also claim that the release of this information may implicate the privacy interests of the individual who managed the program prior to 1997. You state, and provide documentation showing, that you notified this individual of the request and of his 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 § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We begin by considering your assertion that the records in question are not public information within the scope of the Public Information Act (the "Act"). Under the Act, "public information" means information that is "collected, assembled, or maintained" by a governmental body in connection with the transaction of official business. Gov't Code § 552.022. You inform us that the basketball program in question is currently operated and maintained by the district, and that the previous sponsor transferred the program's records to the district when the district assumed sponsorship of the program in 1997. Although you indicate that the records at issue pertain to the program's operation before its adoption by the district, it is apparent that the district assembled these records in the course of officially adopting the program. Moreover, it is apparent that the district maintains this information entirely in connection with the district's duty to maintain the financial records of an official program sponsored and operated by the district. We therefore determine that the records in question are information "collected, assembled, or maintained" by the district in connection with the transaction of official business. Accordingly, the records are "public information" subject to disclosure under the Act. See Gov't Code §§ 552.002, 552.021.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure under common-law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. Although you contend that the submitted documents contain personal financial information that is excepted from required public disclosure under common-law privacy, we find that the financial state of a program adopted by a public school district is a matter of legitimate public concern. See Open Records Decision Nos. 600 (1992), 545 (1990). Furthermore, this office has not received any additional arguments explaining why the information should be protected under common-law privacy. See Gov't Code § 552.305(d)(2)(B) (interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure). Accordingly, we determine that the submitted documents may not be withheld in their entirety under common-law privacy.

The information in the submitted representative sample contains bank account and routing numbers that are subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, the district must withhold the account numbers and routing numbers that we have marked pursuant to section 552.136 of the Government Code.

In summary, the requested information is public information subject to the Public Information Act. Account numbers and routing numbers are excepted from disclosure under section 552.136 of the Government Code. The remainder of the requested information must be released to the requestor.

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 162815

Enc: Submitted documents

c: Ms. Latreese A. Cook
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(w/o enclosures)