



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 3, 2003

Mr. Bill Farney
Director
University Interscholastic League
P.O. Box 8028, University Station
Austin, Texas 78713-8028

OR2003-3753

Dear Mr. Farney:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 184623.

The University Interscholastic League (the "UIL") received a request for the completed Previous Athletic Participation ("PAP") Forms of two particular students at Bowie High School in Austin, Texas, and also for any District 17-5A executive committee minutes where the athletic eligibility of five specific students was discussed. You represent that the UIL does not possess the requested minutes.¹ You do not claim that the requested information is excepted from disclosure under any of the Act's exceptions to disclosure. *See* Gov't Code §§ 552.101-.137. Rather, you ask whether the UIL can release to the requestor the two requested PAP forms.

¹The Act applies to "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Thus, generally the Act applies to information a governmental body maintains, but in some circumstances, the Act applies to governmental records a private entity holds for a governmental body. *See, e.g.*, Open Records Decision Nos. 585 (1991); 499 (1988). We have no information to allow us to conclude that the requested minutes were collected, assembled, or maintained under a law or in connection with the transaction of official business for the UIL and the UIL owns or has a right of access to the minutes.

The Act requires a governmental body that withholds requested information to ask for an open records ruling from this office within ten business days of receiving the request. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

It appears from the information the requestor submitted to this office that the UIL received the request for information on March 5, 2003. You did not request a decision from this office until May 16, 2003. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code.

In addition, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general 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. You did not submit to this office written comments stating the reasons why any exception would allow the information to be withheld, a copy of the written request for information, or a signed statement or sufficient evidence showing the date the UIL received the written request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely request a decision or to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994).

You have not raised any specific compelling reasons to overcome the presumption that the information is public. We have considered whether the information is protected from disclosure based on the common law right to privacy. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional,

statutory, or by judicial decision.” Section 552.101 also encompasses the doctrines of common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Furthermore, this office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The doctrine of common law privacy does not except from disclosure the basic facts concerning a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 523 at 3-4 (1989), 385 at 2 (1983). On the other hand, common law privacy generally protects the background financial information of an individual, that is, information about an individual’s overall financial status and past financial history. *See* Open Record Decision No. 373 at 3 (1983). However, certain circumstances may justify the public disclosure of background financial information. *See id.*

In this case, the PAP Form at issue indicates that the form must be completed and approved by the UIL District Executive Committee before an athlete who participated in any UIL sport in either sub-varsity or varsity level during the current or previous school year at another school is eligible to participate at the varsity level in the sport at a new school. The form contains a parent certification about the athlete’s residence and reason for changing schools, a new school certification that the student is not moving for athletic purposes, and a former school certification and release. The form also asks three yes or no questions about the parent(s)’s financial information: 1.) whether the athlete’s parent owns, leases, or has mortgage payments on the parent’s previous home; 2.) whether the parent owns or is leasing or making mortgage payments on the home to which the parent is moving, and 3.) whether any members of the parent’s immediate family are still residing at the previous address.

In this case, we believe the public has a legitimate interest in the parent(s)’s financial information inasmuch as this information is relevant to the determination of an athlete’s eligibility for UIL sport participation. Accordingly, we find that the information is not protected from disclosure based on the common law right to privacy. *See id.* Thus, we

conclude that the UIL must promptly release the information to the requestor. *See* Gov't Code § 522.221(a); Open Records Decision No. 664 (2000).

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 Dep't of Pub. 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 "Kay Hastings", with a stylized flourish extending to the right.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 184623

Enc: Submitted documents

c: Mrs. Cynthia Lane
Mr. Brent Lane
613 El Portal
San Antonio, Texas 78232
(w/o enclosures)