



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2005

Ms. Marquette Maresh
Walsh, Anderson, Brown, Schulze & Aldrige, P.C.
P. O. Box 2156
Austin, Texas 78768

OR2005-04856

Dear Ms. Maresh:

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# 225444.

The Austin Independent School District (the "district"), which you represent, received a request for 1) "any documents or records that identify the contractors who participated in [a specified survey,]" and 2) "copies of completed survey instruments and any other record that demonstrates the amount each participant listed as wages and the amount each participant listed as benefits." You claim that the responsive information is not public information. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You state and provide documentation showing that you have notified the interested third party, MGT of America ("MGT"), of this request for information and of its right to submit arguments to this office as to why the district should not release information that pertains to MGT. We have received comments from MGT. The requestor has submitted comments stating his belief that the requested information should be released under the Act. *See* Gov't Code § 552.304. We have considered the claimed exceptions and all of the submitted comments and arguments.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information as "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, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Act are whether: (1) information relates to governmental body's official business; (2) consultant acts as agent of governmental body in collecting information; and (3) governmental body has or is entitled to access to information). Where a third party has prepared information on behalf of a governmental body and the governmental body has a right of access to it, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent on behalf of the governmental body is subject to disclosure. Open Records Decision No. 518 (1989).

In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were "public information" for purposes of the Act. In that decision, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by the consultant in preparation of the report were not "public information" for purposes of the Act, and thus not required to be disclosed. *Id.*

In this instance, you state that the information at issue consists of survey data pertaining to a prevailing wage report conducted for the district by MGT, a third-party consultant.¹ You state that the district does not own or have a right of access to the information at issue, and in support of this, you have submitted the district's contract with MGT. You also state that the "[the district] contracted with MGT to prepare a report summarizing the prevailing wages and benefits for specific trade classifications. [The district] does not own, possess, or have a right of access to the raw individualized data acquired by MGT." The requestor asserts that the district owns the requested information.

Whether the district owns the information at issue is a question of fact. This office cannot resolve questions of fact in the open records process, but instead must rely on the representations of the governmental body requesting our opinion. *See generally* Open

¹The district acknowledges that the report generated by MGT is subject to the Act and has made this information available to the public. The district informs us that this report "reflects average hourly wage rates and benefits for a variety of wage classifications" and the "report does not provide identifying information for individual employers or counties."

Records Decision Nos. 554 (1990), 552 (1990). Based on your representations that the district does not own, possess, or have a right of access to the information at issue, we conclude that this information is not “public information” under the Act. *See* Gov’t Code § 552.002. As we are able to make this determination, we do not address the exceptions claimed by the district and MGT.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

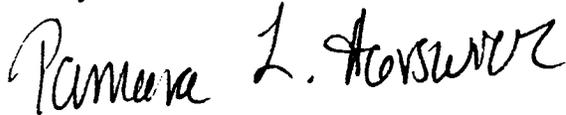
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 that reads "Tamara L. Harswick". The signature is written in a cursive style with a large initial "T" and a stylized "L".

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/krl

Ref: ID# 225444

c: Mr. Michael Murphy
4818 East Ben White Blvd.
Austin, TX 78741
(w/o enclosures)