



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 31, 2006

Mr. W. Clayton Cain  
Cullen, Carsner, Seerden & Cullen, L.L.P.  
P. O. Box 2938  
Victoria, TX 77902-2938

OR2006-01003

Dear Mr. Cain:

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# 241242.

The Victoria Independent School District (the "district"), which you represent, received a request for information related to its recent superintendent search, specifically:

1. The final consulting contract between the district and the superintendent consulting search firm Harold Webb and Associates ("Webb");
2. The guidelines, instructions, brochures or training manuals used for evaluating and screening/interviewing applicants during the district's superintendent's search;
3. Information Webb received from the district's superintendent search candidates, includes the candidates' names and resumes;
4. All "short lists" of the district's superintendent search candidates developed by either the district or Webb;
5. Performance measures, accomplishments, and successes attributed to the district's superintendent search candidates, including the two finalists in the search; and
6. All "non-recommending/opinion" correspondence between Webb and the district in conducting the superintendent search.

You state you have released information responsive to parts 1 and 2 of the request. You state that the district has no information responsive to part 5 of the request.<sup>1</sup> You claim the district is not required to release the responsive information because it does not have possession of it. Alternatively, you claim that the information at issue is excepted from disclosure under sections 552.101 and 552.126 of the Government Code.

Initially, we will address your claim that the district is not required to release information which is not in its possession. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of 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, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, the Act applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained 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)(2). Under the Act, a governmental body must make a good-faith effort to relate a request for information to public information that is within the governmental body's possession or control. See Open Records Decision No. 561 at 8-9 (1990).

In this instance, you explain that the information at issue is in the possession of Webb, the district's superintendent consulting search firm. However, you do not inform us whether Webb holds such information for the district and whether the district has a right of access to this information. If the district has no right of access to responsive information in the possession of Webb, then such information is not public information and it need no be released to the requestor. However, any responsive information in the possession of Webb to which the district has a right of access and which is being held for the district is "public information" subject to the Act. Accordingly, we address this information to the extent that it is public information.

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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 your claimed exceptions apply to the information at issue, nor a copy or representative samples of the specific information at issue.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994).

Sections 552.101 and 552.126 are mandatory exception and each may constitute a compelling reason that overcomes the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). However, because you have not submitted the information at issue, we have no basis for finding that such information is excepted from disclosure under these sections or otherwise excepted from disclosure. Thus, we have no choice but to order the responsive information at issue be released pursuant to section 552.302. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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); *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 Office of the Attorney General 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 241242

c: Mr. Emmett Alvarez  
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(w/o enclosures)