



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2006

Ms. Janet Little Horton
Bracewell & Patterson, L.L.P.
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2006-03006

Dear Mr. Horton:

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# 244808.

The Humble Independent School District (the "district"), which you represent, received a request for the list of applicants for the Atascosita High School head football coaching job. You assert the requested information may be excepted from disclosure under sections 552.101 through 552.147 of the Government Code. You also claim that the release of some of the requested information may implicate the privacy or proprietary rights of interested third parties. Accordingly, you indicate that you notified the third parties of the request for information pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We reviewed the information you submitted and considered the exceptions you raise.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the potential interested third parties have submitted to this office reasons explaining why the district should not release their information. Therefore, these third parties have provided us with no

basis to conclude that they have a protected interest in any of the submitted information and the information may not be withheld on that basis.

Next, we must address the procedural requirements under section 552.301 of the Government Code. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the 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. In this case, the district has not submitted to this office written comments stating the reasons why the exceptions that you raised would allow the information to be withheld.

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). Because you have failed to comply with the procedural requirements of the Act, the district has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions). However, because your other claimed exceptions can provide a compelling reason to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information.

The submitted documents contain information that may be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. You do not inform us whether the district personnel at issue timely elected to keep information confidential. We therefore determine that if the individual at issue timely elected to keep such information confidential pursuant to section 552.024, the district must withhold the address information we have marked in the submitted documents pursuant to section 552.117(a)(1). If, however, the district personnel at issue did not timely elect to keep the information confidential, the district may not withhold this information under section 552.117(a)(1).

In summary, if the individual at issue timely elected to keep his information confidential pursuant to section 552.024, the district must withhold the address information we have marked in the submitted documents pursuant to section 552.117(a)(1). If, however, the district personnel at issue did not timely elect to keep the information confidential, the district may not withhold this information under section 552.117(a)(1). The district must release the remaining submitted information 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, 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/er

Ref: ID# 244808

Enc. Submitted documents

c: Mr. David Rogers
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