



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2009

Mr. Robb D. Decker
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2009-16788

Dear Mr. Decker:

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# 362403.

The Marion School District (the "district"), which you represent, received a request for all records pertaining to or mentioning the AMIkids W.I.N.G.S. program. You take no position with respect to the public availability of the submitted information, but believe that the request may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, that you notified W.I.N.G.S. for Life and the Texas Youth Commission (the "commission") of this request for information and of their 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) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the commission. We have considered the submitted arguments and reviewed the submitted information.

We note that 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, we have not received comments from W.I.N.G.S. for Life explaining why its information should not be released. Therefore, we have no basis to conclude that W.I.N.G.S. for Life has a protected proprietary interest in

the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any portion of the submitted information based upon the proprietary interests of W.I.N.G.S. for Life.

The commission raises section 552.101 of the Government Code for the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 61.073 of the Human Resources Code, which provides:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073. However, upon review of the submitted information, we determine the records do not contain personally identifiable information relating to a youth subject to the control of the commission or any other information encompassed by section 61.073. Accordingly, section 61.073 is not applicable to the submitted information and the district may not withhold any of the submitted information under section 552.101 on that basis.

We note some of the submitted information is subject to section 552.136 of the Government Code.¹ Section 552.136 states that "[n]otwithstanding 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; *see id.* § 552.136(a) (defining "access device"). Accordingly, the district must withhold the insurance policy numbers we have marked under section 552.136.

We also note that some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

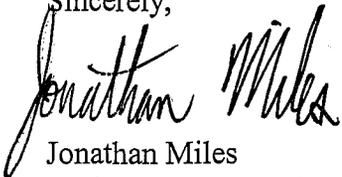
of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released, but any information subject to copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 362403

Enc. Submitted documents

c: Requestor
(w/o enclosures)