



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2015

Mr. Philip D. Fraissinet
Counsel for the Corpus Christi Independent School District
Thompson & Horton, L.L.P.
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027

OR2015-24016

Dear Mr. Fraissinet:

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# 587565.

The Corpus Christi Independent School District (the "district"), which you represent, received a request for information pertaining to two specified positions for specified years and a named district employee. The district states it does not have information responsive to portions of the request.¹ The district states it is releasing some information to the requestor. You claim the remaining requested information is not subject to the Act. Alternatively, you claim the remaining requested information is excepted from disclosure under section 552.126 of the Government Code. You also state release of the requested information may implicate the proprietary interests of BWP & Associates ("BWP"). Accordingly, you state you notified BWP of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (interested party may submit comments stating why information should or should not be released); *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 considered your arguments.

First, you contend the remaining requested information is not subject to the Act because the district does not possess, maintain, or have access to the requested information. The Act is

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

applicable to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) defines “public information” as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all information in a governmental body’s physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Additionally, information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov’t Code § 552.002(a-1).

The remaining requested information consists of interview records, notes, and score sheets of candidates for one of the specified positions at the district. You claim the district does not have a legal entitlement to that information. You assert the information at issue is in the possession of and owned by BWP, which the district contracted with to assist in the district’s search to fill the specified position. We note BWP received a fee for conducting the search to fill the vacant position, including advertising the vacancy, recruiting candidates, gathering data on the candidates, conducting initial interviews, and presenting a list of qualified candidates to the district’s Board of Trustees. Thus, we find public money was spent for the

purpose of writing, producing, collecting, assembling, or maintaining the information. *See id.* § 552.002(a)(2)(C). You inform us, based on the information BWP created, produced, collected, and assembled, the district selected a candidate for one of the specified positions. You assert the purpose of the agreement with BWP was to identify a pool of candidates the district could consider and, ultimately, hire for the position. We find gathering information relating to employment decisions for the district, including, interviewing candidates and gathering data on candidates, are employment activities traditionally carried out by the district. Thus, in performing these employment activities, BWP is providing services that would otherwise be undertaken by the district as part of its official duties. Accordingly, we conclude the information at issue was created for the district in connection with the transaction of official business.

Additionally, you state, and provide a copy of the contract demonstrating, the district and BWP contracted that “all documents produced and received by [BWP would] remain the property of BWP[.]” You inform us BWP shared information about the candidates with the district, but the district returned all information to BWP. However, we note the contract also states BWP “shall turn over to the [district] copies of all documents relating to candidates recommended by [BWP.]” Based on your representations and our review, we find the remaining requested information was written, produced, collected, assembled, or maintained for the district, and the district has a right of access to the information. Therefore, we find the remaining requested information is subject to the Act.

We must now address the district’s obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to subsection 552.301(e), a governmental body 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. *See Gov’t Code* § 552.301(e). The district received the request for information on August 20, 2015. However, as of the date of this letter, you have not submitted a copy of the remaining specific information requested or a representative sample for our review. Consequently, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342,350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open

Records Decision No. 150 (1977). Although you assert third-party interests are at stake, as of the date of this letter, we have not received any arguments from a third party explaining how release of the requested information would affect its proprietary interests. *See* Gov't Code §§ 552.101, 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). Additionally, you raise section 552.126, which can provide a compelling reason to withhold information from disclosure. However, you have not submitted the remaining requested information for our review. Thus, we have no basis for finding any of the information confidential by law. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not be lawfully released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 587565

c: Requestor

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