



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 12, 1996

Ms. JoAnn S. Wright  
School Attorney  
Arlington Independent School District  
1203 West Pioneer Parkway  
Arlington, Texas 76013-6246

OR96-0320

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36557.

The Arlington Independent School District (the "district") received an open records request from a district employee for a copy of a "blank Organizational Health Inventory (OHI)",<sup>1</sup> which you describe as "a diagnostic tool which provides feedback to the leaders of an organization" for the purpose of enhancing leadership effectiveness. You explain that the requested blank OHI form is maintained only by the individual who created and administers this survey document used by the district. You therefore first contend that the requested OHI is not "public information" under the Open Records Act.

Section 552.002 of the Government Code provides in pertinent part:

(a) In this chapter, 'public information' means 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.

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<sup>1</sup>The requestor also seeks access to her personnel file. We assume the district is making all personnel file information available to the requestor.

It is well established that the Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). On the other hand, 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 is subject to section 552.002. See Open Records Decision No. 518 (1989) and authorities cited therein.

It is clear to this office that by administering, scoring, and interpreting the OHI, the developer of this diagnostic survey is acting as an agent of the district in performing a function the district would normally carry out itself. We further note that the district easily obtained a copy of the blank form merely by requesting such from its creator, thus evincing the district's right of access to the form. We therefore conclude that the OHI is "public information" to which the district "has a right of access." We therefore must address whether the form falls within one of the Open Records Act's exceptions to required public disclosure.

You contend that the blank OHI form constitutes a trade secret and thus comes under the protection of section 552.110 of the Government Code. In accordance with the practice of this office established in Open Records Decision No. 575 (1990), this office advised the creator of the OHI form of the open records request and of his responsibility to submit to this office *legal* reasons as to why the form should not be released to the public. Although Dr. Marvin Fairman responded to our request, his response consisted only of conclusory statements as to why the requested information should be withheld from the public and thus failed to establish under the six factors described in our notice that section 552.110 protects the requested information from required public disclosure.<sup>2</sup>

Consequently, the requested form may not be withheld from the public pursuant to section 552.110. We note, however, that the OHI form has been copyrighted. The copyright law gives the copyright holder the exclusive right to reproduce his work, subject to another person's right to make fair use of it. 17 U.S.C. §§ 106, 107. A governmental body must allow *inspection* of copyrighted materials unless one of the act's exceptions to required public disclosure applies to the information. Attorney General Opinion JM-672 (1987) at 2-3. Also, the requestor may make copies of copyrighted materials unassisted

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<sup>2</sup> These six factors are

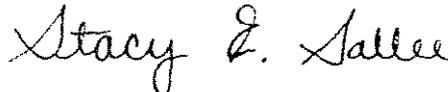
- 1) the extent to which the information is known outside of [the company's] business; 2) the extent to which it is known by employees and others involved in [the company's] business; 3) the extent of measures taken by [the company] to guard the secrecy of the information; 4) the value of the information to [the company] and to [its] competitors; 5) the amount of effort or money expended by [the company] in developing this information; and 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

by the state. Attorney General Opinion MW-307 (1981). "Of course, one so doing assumes the risk of a copyright infringement suit." *Id.* at 2.

Thus, assuming the requested material is in fact copyrighted, you must allow the requestor to view it, and you may also allow him to reproduce the material without the district's assistance so long as such reproduction would not unreasonably disrupt the district's working conditions. See Attorney General Opinion JM-757 (1987). It will be the requestor's responsibility to adhere to the federal copyright law.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/RWP/ch

Ref.: ID# 36557

Enclosure: Submitted document