ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2005

Ms. Ellen B. Huchital
McGinnis, Lochridge & Kilgore, L.L.P.
Counsel for Spring Branch Independent School District
3200 One Houston Center
1221 McKinney Street, Suite 3200
Houston, Texas 77010

OR2005-03782

Dear Ms. Huchital:

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# 223454.

The Spring Branch Independent School District (the "district"), which you represent, received a request for "a complete statement of revenues and finances [covering two school years] from each and every fundraising organization on" certain district campuses. You indicate that you will release some of the requested information to the requestor but claim that other information, which you have submitted for our review, is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we must address the district's obligations under section 552.301 of the Government Code. You inform us that the district received this request for information on February 10, 2005. We note, and you acknowledge, that the district failed to assert section 552.101 within the ten-business-day period mandated by section 552.301(a) of the Government Code. We also note that the envelope containing the district's initial request for a decision bears a postmark date of March 24, 2005. *See* Gov't Code § 308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). We therefore find that the district did not timely raise either section 552.101 or 552.136. However, because sections 552.101 and 552.136 can constitute a compelling reasons to withhold information, we will address your arguments regarding these exceptions. *See* Gov't Code §§ 552.301, 552.302.

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 section encompasses information that another statute makes confidential. You claim that some of the information contained in the submitted federal tax Form 990 is confidential under federal law. Federal tax returns and tax return information are confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a); *see also id.* § 6104(b)(1)-(2) (defining "return" and "return information"). Section 6104 of title 26 provides in relevant part as follows:

> (b) Inspection of annual information returns. – The information required to be furnished by section[] 6033 . . . shall be made available to the public at such times and in such places as the Secretary may prescribe. *Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) or a political organization exempt from taxation under section 527) which is required to furnish such information. . . .*
>
> . . .
>
> (d) Public inspection of certain annual returns[.]
>
> > (1) In general. – In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a) –
> >
> > > (A) a copy of –
> > >
> > > > (i) the annual return filed under section 6033 . . . by such organization,
> > >
> > > . . .
>
> shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .
>
> > (B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.
>
> . . .

> (3) Exceptions from disclosure requirement. –
>
> > (A) Nondisclosure of contributors, etc. – In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, *paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization. . . .*

26 U.S.C. § 6104 (emphasis added). Assuming that none of these contributors listed in the submitted Form 990 is a private foundation or political organization that is excluded from the scope of subsections (b) and (d) of section 6104, we conclude that the names and addresses of contributors that we have marked must be withheld from disclosure under section 552.101 of the Government Code in conjunction with sections 6103 and 6104 of title 26 of the United States Code. *See also Stanbury Law Firm, P.A. v. Internal Revenue Service*, 221 F.3d 1059 (8th Cir. 2000).

We next address your claim under section 552.136 of the Government Code. This section 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. We agree that the district must withhold the bank account numbers you have marked in Exhibit B pursuant to section 552.136.

In summary, the district must withhold the names and addresses of the contributors we have marked in the Form 990 under section 552.101 of the Government Code in conjunction with federal law. The bank account numbers you have marked in Exhibit B must be withheld in accordance with section 552.136 of the Government Code. The remaining submitted information must be released.

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); *Tex. 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 223454

Enc. Submitted documents

c: Mr. Matt Schulte
2423 Elmgate Drive
Houston, Texas 77080
(w/o enclosures)