



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 13, 2005

Ms. Lydia L. Perry  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2005-06200

Dear Ms. Perry:

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# 227965.

The Red Oak Independent School District (the "district"), which you represent, received a request for the following:

- 1) Records or documents submitted by, or in possession of, Craig Stockstill, pertaining to his involvement in any federal lawsuits (pending, dismissed, or finalized within the past three years), in any Federal Court within the State of Texas, specifically the United States District Court For the Western District Of Texas, San Antonio Division.
- 2) Records or documents in the possession of Red Oak Independent School District pertaining to any lawsuits to which Craig Stockstill was a party.
- 3) Records of documents in the possession of Red Oak Independent School District relating to any background searches performed on Red Oak Independent School Superintendent Craig Stockstill, to include: a) the name of the organization or person performing the background search, b) the cost associated with the background search on Craig Stockstill, and c) the

background protocol or parameters established by the District in the search for a superintendent.

You state that you do not have any information responsive to category #2 of the instant request.<sup>1</sup> You further state that the information responsive to category #3 has been released, with certain redactions, in accordance with Open Records Letter No. 2005-04010 (2005). You claim that the submitted information, which is responsive to category #1, is not public information. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have also received arguments from Floresville Independent School District (“Floresville”) and the requestor. *See* Gov’t Code § 552.304. We have considered the claimed exceptions and all of the submitted comments and arguments.

The district argues that the submitted information is not public information subject to the Act. *See* Gov’t Code § 552.021 (Act is only applicable to “public information”). Section 552.002 defines public information as “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.” You note that the submitted information concerns a lawsuit that the district’s superintendent was involved in while employed with Floresville, and that this litigation has no connection to the district. You state that the submitted information was prepared and compiled by attorneys representing Floresville and the superintendent, in his capacity as superintendent of Floresville. You indicate that while the superintendent does have possession of the submitted information, the district does not have possession of or access to it. Furthermore, you state that the submitted information is in the physical possession of the superintendent solely because he was a named defendant in the lawsuit and a former employee of Floresville. Finally, you state that while the submitted information may have been created and used in furtherance of the official business of another school district, it was neither necessary to nor used in furtherance of any official business of the district. Based on these representations and our review, we find that the district did not collect, assemble, or maintain the submitted information pursuant to any law or ordinance or in connection with the transaction of any official business. Therefore, we agree that it does not constitute “public information” that is subject to the Act. *See generally* Open Records Decision No. 635 (1995) (stating certain factors that are considered when determining whether information is subject to the Act).

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<sup>1</sup>We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov’t Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Econ. Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

Consequently, the district is not required to disclose this information under the Act. As our ruling is dispositive, we need not address any of the remaining arguments for withholding the submitted information.

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 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,

A handwritten signature in black ink, appearing to read 'JAP', written over a horizontal line.

James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 227965

Enc. Submitted documents

c: Mr. Rodney Pat Ramsey  
404 Chad Lane  
Red Oak, Texas 75154  
(w/o enclosures)