



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 17, 2006

Mr. Frank D. Davis  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
700 Preston Commons  
8117 Preston Road  
Dallas, Texas 75225

OR2006-00538

Dear Mr. Davis:

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# 240303.

The Texans Can! Academy (the "academy"), which you represent, received a request for information relating to employee grievances. You inform us that the academy will release some of the requested information. You state that the academy does not believe that it maintains any information that is responsive to one aspect of this request. In the alternative, you have submitted a document that you claim is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and have reviewed the submitted information.

You assert that the academy has no information that is responsive to the request for "any and all documents wherein [the academy] adopted or established a policy or practice giving a deadline of five days to appeal to the Board of Trustees a denial of a formal grievance presentation." Nevertheless, you also have submitted a document that "arguably may be responsive to this part of the [r]equest." In responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or create new information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body need not take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds such information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a

governmental body must make a good-faith effort to relate a request for information to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

In this instance, the academy has identified and submitted information "that arguably may be responsive" to this request for information. You also state that "while not responsive to [the requestor's] specific request, [the submitted information] may provide some historical background as to the [academy's] past practices regarding grievance appeals." Moreover, you also assert that the submitted information "directly relates" to a whistleblower claim that the requestor's client has threatened to bring. Based on the academy's identification and submission of the information in question and your representations, we will consider whether the academy may withhold this information from the requestor.

We note that the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022 provides for the required public disclosure of "a rule of procedure," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(9); *see also id.* § 552.022(a)(15) (providing for required disclosure of information regarded as open to the public under an agency's policies). Although the academy seeks to withhold the submitted information under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022 of the Government Code. Therefore, the academy may not withhold any of the submitted information under section 552.103 of the Government Code. As you claim no other exception to disclosure, the 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).

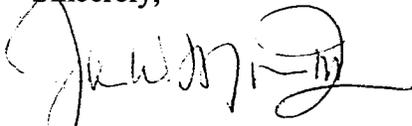
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 240303

Enc: Submitted documents

c: Mr. Karl Tiger Hanner  
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(w/o enclosures)