



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2007

Mr. Christopher B. Gilbert  
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Houston, Texas 77002-2770

OR2007-09551

Dear Mr. Gilbert:

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# 284918.

The Houston Independent School District (the "district"), which you represent, received a request for ten categories of information related to the Bellaire High School Baseball program, and the Bellaire Baseball Booster Club and Bellaire Offseason Baseball (collectively the "booster club"). You state that information responsive to seven of the ten categories will be provided to the requestor. You state that most of the requested statistical information does not exist.<sup>1</sup> You claim that the remaining requested information is not public information subject to disclosure under the Act. In the alternative, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

You contend that the information at issue is not public information subject to the Act. The Act applies only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as:

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<sup>1</sup> We note that the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, obtain information that is not held by or on behalf of the governmental body, or comply with a standing request to provide information on a periodic basis. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

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.

*Id.* § 552.002. Information is generally subject to chapter 552 when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. Open Records Decision No. 635 (1995). You inform us that the information at issue consists of the internal financial records of the booster club. You state that the booster club is a separate legal entity and operates completely independently from the district. You explain that the district “does not maintain or . . . store the [b]ooster [c]lub’s records,” nor does the district own or have a right of access to these records. You state that the “[d]istrict wants to make it clear that these are not documents which were in the possession, custody, or control of the [d]istrict prior to receiving the [current request for information].” Based on your representations, we agree that the booster club financial records at issue are not “public information” under the Act because the records are not collected, assembled, or maintained by or for the district. *See* Gov’t Code § 552.002. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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

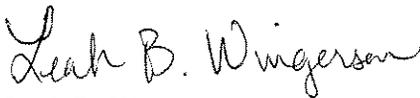
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 284918

Enc. Submitted documents

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