



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2007

Mr. Christopher B. Gilbert
Partner
Bracewell & Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2007-12216

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# 289449.

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").¹ You state that information responsive to six of the ten categories, as well as part of another category, will be provided to the requestor. You state that there is no information responsive to two of the ten categories.² You claim that information responsive to one of the ten categories is not public information subject to disclosure under the Act. You claim that the remaining requested information is excepted

¹ As you have not submitted the original request for information, we take our description from your brief.

² We note that the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

from disclosure under sections 552.107 and 552.111 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

You contend that a portion of 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:

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 responsive to category number 7 of the request consists of meeting minutes 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 information at issue is “wholly in the possession of the [b]ooster [c]lub and . . . the [d]istrict does not have access” to the information. 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 meeting minutes 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.

Next, we must address the district’s procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body seeking to withhold

³ Although you assert the attorney-client and attorney work product privileges under section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas rules of Civil Procedure, we note that sections 552.107 and 552.111 are the proper exceptions to raise for your attorney-client and attorney work product privilege claims in this instance. *See* *Open Records Decision No. 676 (1988)*.

⁴ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* *Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requested information must submit to this office a copy of the written request for information within fifteen business days of its receipt. Gov't Code § 552.301(e)(1)(B). As of the date of this ruling, the district has not submitted a copy of the written request for information. Instead, the district submitted an e-mail message summarizing the request for information. We therefore find that the district has failed to comply with the procedural requirements of section 552.301(e). *See id.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

You raise sections 552.107 and 552.111 of the Government Code as exceptions to disclosure of the submitted information. These exceptions, however, are discretionary in nature. They serve only to protect a governmental body's interests and may be waived. As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (attorney-client privilege under section 552.107 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the district may not withhold the submitted information pursuant to section 552.107 or section 552.111 of the Government Code.

We note, however, that the submitted documents include an e-mail address that is subject to section 552.137 of the Government Code. This section is a mandatory exception to disclosure that may not be waived by a governmental body and therefore provides a compelling reason to withhold information for purposes of section 552.302.⁵ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body"

⁵ The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address that we have marked does not appear to be of a type specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137 unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the district must withhold the e-mail address we have marked pursuant to section 552.137 of the Government Code. The remaining 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).

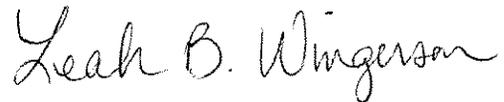
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink that reads "Leah B. Wingerson". The signature is written in a cursive, flowing style.

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 289449

Enc. Submitted documents

c: Mr. Scott Rothenberg
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(w/o enclosures)