



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2008

Mr. Robert C. Wendland
Rapier, Wilson & Wendland, P.C.
103 West McDermott
Allen, Texas 75013-2792

OR2008-08967

Dear Mr. Wendland:

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# 315324.

The Allen Independent School District (the "district"), which you represent, received a request for "a complete copy of the resumes and qualifications of judges hired to judge the tryouts for Allen High School junior varsity and varsity cheerleading squads for the 2008-09 school year" and "access to and a complete copy of the request for judges by Allen school officials to Spirit Event Coordinators for the 2008-09 cheerleading tryouts." You state that you have released the responsive information that you possess to the requestor. You claim that the remaining requested information is not subject to the Act, or in the alternative, that it is excepted under section 552.101 of the Government Code. We have considered your arguments.

The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of

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(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987). A governmental body must make a good-faith effort to relate a request for information to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). However, a governmental body need not answer factual questions, conduct legal research, release information that did not exist when it received the request, or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request for it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989).

In this instance, you state that the district does not possess or have a right of access to the resumes or qualifications of the judges hired to judge the cheerleading tryouts. *See* Gov't Code § 552.002. You have submitted the district's contract agreement with Spirit Event Coordinators which does not indicate that the district has a right of access to the information at issue. Based upon the submitted arguments and our review, we determine that the district neither has possession of or access to the requested information; thus, we conclude that the requested information is not public information under the Act and it need not be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

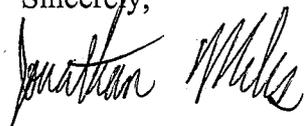
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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 challenge 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 315324

c: Ms. Karin Shaw Anderson
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