



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2008

Mr. Gary Allmon Grimes  
Schuerenberg & Grimes  
120 West Main Street, Suite 201  
Mesquite, Texas 75149

OR2008-12421

Dear Mr. Grimes:

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# 321192.

The Mesquite Independent School District (the "district"), which you represent, received a request for e-mails, memos, correspondence, records, and reports concerning athletic fundraisers at Mesquite High School during a specified time period. You state that you will release some of the information. You claim that the submitted information is not subject to the Act. In the alternative, you claim that the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit written comments concerning disclosure of requested information).

You contend that the submitted information 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 state that the submitted information consists of booster club records that are not owned by the district, do not relate to the official business of the district, and the district does not have a right of access to this information. You further state that the booster club is a separate legal entity and operates completely independently of the district. We note that the submitted information includes e-mails exchanged between the district's internal auditor and the booster club. We also note that the district states that the auditor obtained the submitted fundraising records of the booster club during an audit. Accordingly, we find that the district maintains the information in its official course of business. Thus, the submitted information is subject to the Act and we will address your argument against disclosure.

Section 552.116 of the Government Code provides as follows:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

- (b) In this section:

- (1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

- (2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

- (A) intra-agency and interagency communications; and
- (B) drafts of the audit report or portions of those drafts.

Government Code § 552.116. You state that the submitted information constitutes audit working papers that were prepared or maintained by the district's internal auditor. You inform us that the district's Board of Trustees created the position of internal auditor to, in part, perform financial and operational audits for the district. Based on your arguments and our review, we agree that the submitted information constitutes audit working papers, and thus may be withheld under section 552.116 of the Government Code.

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).

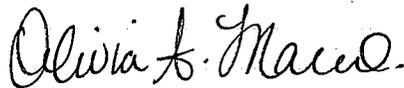
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/mcf

Ref: ID# 321192

Enc. Submitted documents

c: Ms. Shannon Zmud  
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(w/o enclosures)