



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2013

Ms. Haley Turner
For Birdville Independent School District
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2013-05825

Dear Ms. Turner:

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# 483715.

The Birdville Independent School District (the "district"), which you represent, received a request for three categories of information concerning a specific demographic report. You state the district has released some of the information. You argue the submitted information is not public information subject to the provisions of the Act. In the alternative, you state the proprietary interests of School District Strategies ("SDS") might be implicated. Accordingly, you notified SDS of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

You explain the district contracted with SDS to develop a report of projected enrollment at all elementary school campuses during the next nine years. SDS provided the projected

enrollment report to the district, and that report was released to the public on the district's website. However, in order to create the projected enrollment report, SDS "collected data from the [d]istrict as well as various external sources, including other local government entities, state agencies, the U.S. Census Bureau, and other entities which compile data." You explain the information at issue consists of this background data collected by SDS in order to complete the projected enrollment report. You state that because the data is held solely by SDS, and the district does not have a right of access to it, the data is not subject to the Act.

The Act is applicable to "public information." *See id.* § 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). Whether information prepared by a private party on behalf of a governmental body is in the physical custody of a governmental body is not determinative of whether the information is subject to the Act. *See, e.g.*, Open Records Decision Nos. 558 (1990), 499 (1988), 462 (1987). The test for determining whether the Act applies to information held by an outside party is whether (1) the information relates to the governmental body's official duties or business; (2) the consultant acts as agent of the governmental body in collecting the information; and (3) the governmental body has or is entitled to access to the information. ORDs 499 at 2, 462 at 4. In Open Records Decision No. 518 (1989), this office determined that "if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to [the Act]." ORD 518 at 2-3; *see* Open Records Decision Nos. 445 (1986), 437 (1986), 317 (1982).

Under the terms of its contract with the district, SDS collected the data at issue and provided the district with the projected enrollment report "so that district leaders can make confident budget, staffing, and facility utilization needs." We find the collection of data related to student enrollment for the purpose of determining future budgetary, staffing, and capital needs is a service related to public education that is traditionally carried out by public school districts. Thus, in collecting the data at issue, SDS provided a service that would otherwise be undertaken by the district as part of its official duties as a public education agency. Accordingly, we conclude the data at issue was collected and maintained by SDS as an agent of the district and in connection with the district's official business.

We next consider whether the district owns or has a right of access to the data at issue. We note the contract between the district and SDS is silent as to granting or denying the district a specific right of access to the data. However, the contract does stipulate the fee paid by the district "is all-inclusive of data collection [and] analysis[.]" Thus, because the district's fee to SDS included the collection and analysis of data, we find the district owns or has a right of access to the data at issue. Accordingly, as the data at issue was collected, analyzed, and maintained by SDS as the district's agent in connection with the transaction of official

business for the district, and the district paid for the collection and analysis of this data, we conclude it is public information subject to the provisions of the Act.

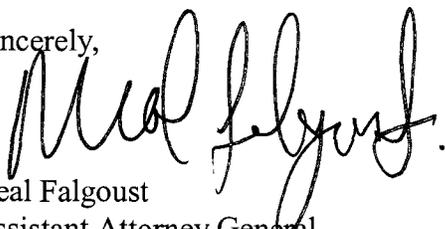
Because we find the data at issue is subject to the Act, we must address the requestor's contention the district failed to meet its procedural obligations in requesting a decision from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b); *see also id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). The district received the initial request for information on January 17, 2013. The district sought clarification of the request and received a clarification on January 23, 2013. We note the Texas Supreme Court has held when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010). Therefore, measuring from the date the district received the clarified request, the district was required to request a ruling from this office on or before February 6, 2013. The district's request for a ruling bears a meter mark of February 1, 2013. Further, as the requestor acknowledges, the request for a ruling was received by the post office on February 2, 2013. Accordingly, we conclude the district complied with its procedural obligations under the Act in requesting a decision from this office.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from SDS. Thus, SDS has not demonstrated it has a protected proprietary interest in any of the information at issue. *See id.* § 552.110(a)-(b); *Open Records Decision Nos. 661 at 5-6 (1999)* (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold the data at issue on the basis of any proprietary interests SDS may have in it. As the district raises no exceptions to disclosure, the data at issue must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 483715

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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