



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2013

Ms. Brandy N. Davis  
Counsel for Rockwall Independent School District  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2013-06132

Dear Ms. Davis:

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# 484991.

The Rockwall Independent School District (the "district"), which you represent, received a request for the names of all applicants and finalists for a specified coaching position. You state you do not have information responsive to the request for the names of the finalists.<sup>1</sup> You claim the remaining requested information is not subject to the Act. In the alternative, you claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You state release of this information may implicate the proprietary interests of Champions Search Firm ("Champions"). Accordingly, you have notified Champions of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

circumstances). We have received comments from Champions and have considered the submitted arguments. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The district and Champions argue the remaining requested information is not subject to the Act. The Act is applicable to "public information." *See id.* § 552.021. Section 552.002 of the Act provides "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 information in a governmental body's physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, the Act applies to information a governmental body does not physically possess if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987).

The district states it does not maintain any of the remaining requested information. The district states the information at issue is maintained by Champions, a private consulting firm contracted by the district to fill certain job vacancies. The district states, and Champions confirms, the district does not own or have a right of access to any of the information at issue as stated in the consulting agreement, which the district has provided to our office. Thus, based on these representations and our review, we determine the information at issue is not public information for purposes of section 552.002 of the Government Code. Therefore, the remaining requested information need not be provided in response to this request.<sup>2</sup>

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.

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<sup>2</sup>As our ruling is dispositive, we need not address your arguments in the alternative.

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](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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 484991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. John Paul Young  
CHAMPIONS Search Firm  
215 Preston Trail  
Jacksonville, Texas 75766  
(w/o enclosures)