



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2013

Ms. Haley Turner
Counsel for Birdville Independent School District
Walsh, Anderson, Gallegos, Green & Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768-2156

OR2013-07411

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# 486629.

The Birdville Independent School District (the "district"), which you represent, received a request for a specified report, the documentation requesting preparation of the report, the letter or document of transmittal from School District Strategies ("SDS") to the district, and all electronic media related to, contained within and used to produce the report. You state the district has released some of the requested information. You claim the submitted information is not subject to the Act. In the alternative, you state the proprietary interests of SDS might be implicated. Accordingly, you have notified SDS 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 circumstances). We have considered your argument and reviewed the submitted representative sample of information.¹

¹We 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.

You explain the district contracted with SDS to develop a report of attendance zone demographics at a specified district elementary school. SDS provided the demographic report to the district, and that report was released to the requestor. However, in order to create the demographic 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 demographic 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 demographic report in order to produce up-to-date student enrollment projections for the district “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.

We note 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 486629

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Brent Alexander
School District Strategies
c/o Ms. Haley Turner
Walsh, Anderson, Gallegos, Green & Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768-2156
(w/o enclosures)