



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 20, 2016

Mr. Harry F. Wright, Jr.
School Attorney
Bryan Independent School District
101 North Texas Avenue
Bryan, Texas 77803

OR2016-01462

Dear Mr. Wright:

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# 594716.

The Bryan Independent School District (the "district") received a request for information pertaining to (1) the administration of the Capturing Kids' Hearts program (the "program"); (2) the process by which the district vetted the credentials of those responsible for the program; (3) the process by which the district vetted the program; (4) the cost of the program; (5) how the program's success will be measured; and (6) the process by which the district communicates with parents about the program.¹ You claim the submitted information is expected from disclosure under section 552.110 of the Government Code. Further, you claim the release of the submitted information may affect the interests of The Flippen Group ("Flippen"). Accordingly, you inform us you have notified Flippen of the request and of its right to submit comments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990)

¹You note the district sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that 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).

(statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the district has only submitted the 2011 and 2014 version of Flippen's Capturing Kid's Hearts manual. The district has not submitted information responsive to the remaining requested information. We assume, to the extent any information responsive to the remaining categories of requested information existed on the date the district received the request, the district has released it. If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, you assert the submitted information is excepted from disclosure under section 552.110 of the Government Code. However, section 552.110 protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Therefore, we do not address your argument under section 552.110. An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Flippen explaining why the submitted information should not be released. Therefore, we have no basis to conclude Flippen has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the district may not withhold the submitted information on the basis of any proprietary interest Flippen may have in the information.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As no other exceptions to disclosure have been raised, the submitted information must be released; however, any information subject to copyright may only be released in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 594716

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Flip Flippen
The Flippen Group
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(w/o enclosures)