



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 10, 1996

Mr. Donald J. Walheim  
Schulman, Walheim, Heidelberg & Acevedo, Inc.  
745 E. Mulberry, Suite 700  
San Antonio, Texas 78212

OR96-0918

Dear Mr. Walheim:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39769.

The San Antonio Independent School District (the "school district"), which you represent, received a request for:

1. All written material submitted to the district by the Texas Education Agency monitor on the progress and status of the district's low-performing schools since May of 1995.
2. The latest amended petition of each and every lawsuit, county, state or federal, pending against the district.
3. Each and every legal settlement or claim (including the signed settlement document) paid by the district during the period from January 1, 1991 to the present.
4. Tallies and documentation of all legal bills paid by the district from the beginning of fiscal year 1991-1992 to the present . . . includ[ing] a total budgetary figure for legal services during each year, along with the detail billing records that show what work was performed.

You claim that some of the requested information is "readily available to the requester at the local State and Federal Courthouses."<sup>1</sup> You claim that certain settlement documents are confidential because the parties agreed that the terms should be confidential.<sup>2</sup> You claim that the school district has no objection to releasing the amounts of legal bills paid. However, you claim that there will be considerable copying expenses and that the amount of detail on the legal bills "poses [a] considerable danger of revealing the District's trial and litigation strategy." Finally, you claim that the bills "contain private matters dealing with personnel investigations, ongoing settlement negotiations, land acquisitions, and other matters which are generally within the purview of the exceptions to the Open Records Act."

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Similarly, section 552.301(b) of the Government Code requires a governmental body requesting an attorney general's decision to submit a copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested. On April 10, 1996, we requested these copies; to date, we have not received them. The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate your request for a decision. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act and that the information is presumed to be public. Open Records Decision No. 195 (1978).

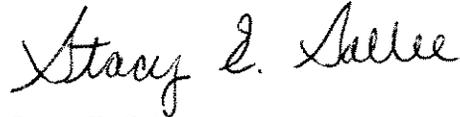
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<sup>1</sup>We note that section 552.022(17) provides that "public information" includes information that is also contained in a public court record. Therefore, the fact that these records are also available to the requestor at the courthouse does not, in and of itself, exempt the school district from complying with the request for information.

<sup>2</sup>Governmental bodies may not agree to keep information confidential. Open Records Decision No. 444 (1986) at 6. However, section 552.107(2) provides that information is excepted from disclosure if a court by order has prohibited disclosure of the information.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *Id.*; see also Gov't Code § 552.352 (distribution of confidential information is criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 39769

cc: Mr. Ken Dilanian  
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