



May 25, 1999

Mr. Blake Hansen
McHahon, Tidewell, Hansen, Atkins & Peacock, P.C.
4001 East 42nd, Suite 200
Odessa, Texas 79762

OR99-1452

Dear Mr. Hansen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124477.

The Ector County Independent School District ("ECISD") received a request for

all teaching materials and video's (sic) titled "Puberty, Bodies in Progress for Boys" and "Puberty, Bodies in Progress for Girls" and all support information including but not limited to: text-books, hand-outs and teacher books

and

any board meeting minutes pertaining to the board approval and use of the teaching curriculum Growth and Development Program for fifth-graders.

You state that you have given the requestor permission to review all of the requested information, and you have provided to him all information that you do not claim is exempt from copying. You do, however, claim that some of the requested information is protected from being copied under sections 552.027(b), 552.101, and 552.110. The information that you claim is excepted from copying consists of two copyrighted video tapes produced by World Education Media, a curriculum designed by employees of ECISD, and a copyrighted curriculum developed by Michael and Tamera Young. We have considered the exceptions you claim and have reviewed the documents that you submitted.

You contend that the requested information is not subject to disclosure pursuant to section 552.027 of the Government Code because "it is a publication that is made available to the public as a 'resource material.'" Section 552.027(b) of the Government Code provides:

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a

governmental body is not required to make a copy of the information in response to a request for public information.

Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere *to any member of the public*. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994) (emphasis added). Therefore, section 552.027 excludes commercially available research material from the definition of "public information."

You do not explain, and we cannot determine, whether the requested video tapes and curriculum are available to the public. We therefore conclude that the materials at issue do not constitute the type of information that section 552.027 was intended to exempt from the provisions of the Public Information Act. Accordingly, the ECISD may not withhold the requested information pursuant to section 552.027.

This office notified Michael Young, Ph.D, Tamera Young, and ETR Associates and attempted to notify World Education Media about the request for information since the property and privacy rights of third parties may be implicated by the release of the requested information. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *Open Records Decision No. 542 (1990)* (determining that statutory predecessor to *Gov't Code § 552.305* permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). This office did not receive responses from any of the interested third parties.

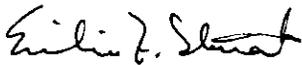
Because the interested third parties did not respond to our notice, we have no basis to conclude that the information at issue is excepted from disclosure under section 552.110. *See Open Records Decision Nos. 639 at 4 (1996)* (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), *552 at 5 (1990)* (party must establish prima facie case that information is trade secret), *542 at 3 (1990)*.

Finally, you argue that the ECISD should not copy the information at issue because it is copyrighted material and confidential by statute pursuant to section 552.101. The copyright law gives the copyright holder the exclusive right to reproduce his work, subject to another person's right to make fair use of it. 17 U.S.C. §§ 106, 107. A governmental body must allow *inspection* of copyrighted materials where no exception to required public disclosure otherwise applies. Attorney General Opinion JM-672 at 2-3 (1987). Also, the requestor may make copies of copyrighted materials unassisted by the state. Attorney General Opinion MW-307 (1981). "Of course, one so doing assumes the risk of a copyright infringement suit." *Id.* at 2.

Thus, assuming the requested material is in fact copyrighted, and in light of our discussion above, the ECISD must allow the requestor to view the requested information and also allow him to reproduce the material without the ECISD's assistance, so long as such reproduction would not unreasonably disrupt the ECISD's working conditions. *See* Attorney General Opinion JM-757 (1987). It will be the requestor's responsibility to adhere to the federal copyright law.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 124477

encl: Submitted documents

cc: Mr. Jerry Vasquez
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Midland, Texas 79711
(w/o enclosures):