



June 1, 1999

Mr. David Anderson
Chief Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR99-1498

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126513.

The Texas Education Agency ("TEA") received a request for information relating to the annexation of Asherton Independent School District to Carrizo Springs Independent School District. You claim that the information responsive to item 6 is excepted from public disclosure under section 552.107 of the Government Code. We assume that you have released the remaining requested information.

Section 552.301 of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions [to required disclosure under the Public Information Act (the "act")] . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's

decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

Gov't Code § 552.301(a). Section 552.301 requires a governmental body to ask for a decision within the ten-day deadline. You informed us that TEA received the request for information on May 6, 1999. You further state that you mailed the request to this office on May 20, 1999, and that "Inter-Agency delivered [it] on May 20, 1999." However, our records indicate that this office received TEA's request for a decision on May 21, 1999, more than ten business days after your receipt of the written request.

Section 552.308 of the Government Code is the only provision in the act that addresses the timeliness of submissions to this office. The provision, which establishes a "mailbox rule" for determining when a request has been timely submitted, reads as follows:

When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail properly addressed with postage prepaid and:

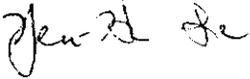
- (1) it bears a post office cancellation mark indicating a time within the period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within the period.

Section 552.308 refers only to mail sent by first class United States mail. Therefore, we do not believe section 552.308 applies to mail sent by interagency mail. Since the act does not provide a comparable "mailbox rule" for requests submitted by means other than U.S. mail, such requests are considered to be timely made only upon receipt by the Office of the Attorney General. This interpretation has been the consistent opinion of this office. *See, e.g.,* Open Records Letter No. 97-0599 (1997). As stated above, TEA's request was not sent by first class United States mail, but rather by interagency mail. Therefore, the timeliness of this request is governed by section 552.301 and not section 552.308.¹ Thus, we conclude that TEA failed to meet the section 552.301 deadline. Consequently, TEA has waived its section 552.107 claim, and you must release the requested information.

¹We note that legislation pending before the Texas Legislature this session would amend section 552.308 to provide that a ruling request submitted by interagency mail is considered to be timely upon its deposit in interagency mail. *See* S.B. 1851, §26 (enrolled version).

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref.: ID# 126513

Encl: Submitted documents

cc: Ms. Katherine L. Moore
General Counsel
Texas State Teachers Association
316 West Twelfth Street
Austin, Texas 78701
(w/o enclosures)