



December 9, 1999

Mr. Robert L. Kane  
University of Texas System  
Office of General Counsel  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR99-3566

Dear Mr. Kane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130293.

The University of Texas System (the “university”) received a request for all audio tapes made during the course of a grievance hearing that took place on September 1, 8, 15, and 17, 1999. You claim that the requested information is currently unavailable and is therefore not subject to required public disclosure pursuant to section 552.221(c) of the Government Code. We have considered your argument and reviewed the submitted information.

Initially, we address your contention that the requested tapes are not subject to the Public Information Act (the “Act”). You claim that the tapes pertain to an ongoing proceeding, and due to the current incompleteness of the record, the tapes are not yet subject to the Act. However, “public information” subject to the Act means “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for a governmental body “and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002(a). Not only is the Act’s definition of “public information” broad, but it contains no exception or exemption for information pertaining to an incomplete proceeding. *See* Gov’t Code § 552.002. Therefore, regardless of whether the underlying proceeding is complete, the requested tapes constitute public information subject to the Act.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure under the Act. Among other requirements, the governmental body, “no later than the 15<sup>th</sup> business day after the date of

receiving the written request,” must submit to the attorney general “a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested” Gov’t Code § 552.301(e)(D). Otherwise, the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

In this case, the written request for information shows a date stamp indicating that the university received the request on September 27, 1999. Accordingly, you were required to send to this office a copy of the requested audio tapes no later than October 11, 1999.<sup>1</sup> However, as of today’s date, you have not provided this office with a copy of the requested tapes. Therefore, the university must release the requested tapes unless you can show a compelling reason for withholding them. *See, e.g.*, Open Records Decision No. 150 (1977) (compelling reason for withholding may be shown by demonstration that information is made confidential by another source of law or affects third party interests).

You argue that the requested tapes are currently in use by a professor acting as a staff aide to the grievance panel, and that this professor does not have the capabilities of duplicating the tapes. Duplicating the tapes would therefore require sending the tapes to another department in the university or else to an outside duplicating service. You argue that embarking on such a project would place an unwarranted burden on the custodian of the records due to the fact that a strict chain of custody must be kept. We fail to see how maintaining a chain of custody while the requested tapes are copied would place a burden on the custodian of records such that would constitute a compelling reason to withhold the tapes.<sup>2</sup> Furthermore, such a burden does not relieve the university of its required compliance with section 552.301(e). As we find no compelling reason to withhold the requested tapes, the university must release the tapes to the requestor.<sup>3</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

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<sup>1</sup>You argue that the requested tapes are incomplete because they do not yet contain the complete record of the entire hearing, and because they have not yet been protected with a complete chain of custody. Your argument, regardless of whether it has merit, concerns whether the tapes must be disclosed to the requestor. However, it is clear from your letter that the requested tapes exist and are in the university’s possession. Consequently, as part of its attempt to seek an exception to required disclosure, the university was required to submit copies of the requested tapes to this office pursuant to section 552.301(e)(1)(D).

<sup>2</sup>Moreover, you state that the tapes will be complete, and the grievance panel will no longer be using the tapes as of October 22, 1999. Therefore, even if a compelling reason existed at one time, it no longer applies.

<sup>3</sup>However, the university may not release information that is confidential under other sources of law.

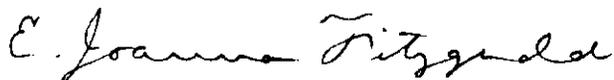
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 130293

cc: Mr. Tim Sims  
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(w/o enclosures)