



February 17, 2000

Mr. Mark C. Goulet
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2000-0601

Dear Mr. Goulet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132291.

The San Marcos Independent School District (the "school district"), which you represent, received a request for information regarding two school district employees. Specifically, the requestor seeks: 1) the job posting or other documentation relating to the availability of a certain reading teacher position, including any documentation relating to the administrative reasons for the dismissal and/or transfer of a certain school district employee; 2) copies of the resume and/or employment application of a certain school district employee; 3) a copy of a certain school district employee's employment contract; and 4) any administrative memoranda or official school policy relating to proposed staff changes that occur midterm. You state that you have released most of the responsive information to the requestor. However, you have submitted for our review two letters which you claim are excepted from disclosure under sections 552.101 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

First, we address your statement that all or some of the requested information is excepted under section 552.101 of the Government Code. Although you have raised that exception,

¹You state that the school district has withheld some of the information responsive to the request as that information falls under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

you have not explained its applicability to the submitted information. Accordingly, we conclude that the school district may not withhold any of the submitted information under this exception.

Next, we address your argument concerning section 552.107(1) of the Government Code. Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

The documents at issue consist of two letters and a memorandum. The two letters are from the school district’s attorney to the school district in which the attorney renders legal advice. Therefore, both letters contain information that is excepted under section 552.107. However, one of the letters also contains information that is purely factual and that therefore must be released. We have marked this letter, indicating the information that may be withheld under section 552.107. As for the memorandum, this document generally contains factual information that must be released. However, a small portion of the memorandum reveals legal advice rendered to the school district which may be withheld under section 552.107. Therefore, the school district may withhold the portions of the submitted documents that we have marked. The school district must release the rest of the submitted information.

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.

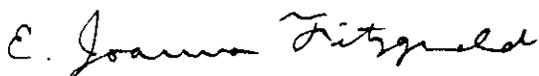
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge 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/ch

Ref: ID# 132291

Encl. Submitted documents

cc: Ms. Jacqueline Cullom Murphy
338 Prince Drive
New Braunfels, Texas 78130
(w/o enclosures)