



March 28, 2000

Mr. Aric J. Garza
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR2000-1209

Dear Ms. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133439.

The San Antonio Independent School District (the "district") received a request for:

1. All written communications, including, but not limited to, all Critical Incident Report forms, from Ms. Gloria Villalobos, [principal of Bowden Elementary School] to both the Deputy Superintendent and any Instructional Steward, from January 1, 1993 to the present, December 15, 1999.
2. All written or otherwise recorded requests for affirmation from Ms. Gloria Villalobos to the Deputy Superintendent to send a trespass warning notice, from January 1, 1993 to the present, December 15, 1999.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.111, 552.114 and 552.026 of the Government Code.

Before we address the district's claims in regard to the instant request, we will consider the district's duties under the Public Information Act (the "Act") with regard to a prior related request. This office received written comments from the requestor, a representative of the Texas Justice Foundation ("TCJ"), pursuant to section 552.304 of the Government Code. TCJ states that on October 28, 1998, it submitted a request for all criminal trespass warnings issued by Ms. Villalobos for the period between January 1, 1993 and October 28, 1998. TCJ states that the district produced to the requestor one citation for criminal trespass in response to the request on December 22, 1998. TCJ states that, as of the date of its written comments,

the district has not produced any other information for this time period, despite the district's representations that it was attempting to do so. Finally, TCJ further states that the district did not request a decision from this office in accordance with section 552.301 of the Government Code regarding TCJ's October 28, 1998 request for information.

Section 552.301(a) 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 [Act's] exceptions . . . 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.

Under section 552.302, a governmental body's failure to seek an attorney general decision as required in section 552.301 results in the legal presumption that the information is public and must be released. Gov't Code §552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Thus, to the extent that the district maintains information in response to the October 28, 1998 request for information, it has waived all discretionary exceptions to disclosure and the information is presumed to be public. Gov't Code §552.302. Therefore, absent a compelling reason to withhold the information, such as a demonstration that the information is confidential by law, the district must promptly release to the requestor all information responsive to the October 28, 1998 request. Gov't Code §552.221; *see* Open Records Decision 664 (2000).

Turning to the current request, we find that the district has not complied with the requirements of the Act in requesting a decision from this office. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request . . . a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not comply with section 552.301(e) because you did not submit copies of the specific information requested or representative samples of the information requested within fifteen business days of receiving the request.¹

¹In calculating the tenth and fifteenth business days under section 552.301, this office excluded January 17, 2000 as a national holiday. The district does not indicate that it observed any other holiday in this time period. Thus, the district submitted the information at issue on February 1, 2000, the sixteenth business

Under section 552.302, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code §552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The discretionary exceptions you raise, sections 552.108 and 552.111, are therefore waived. However, the applicability of the mandatory exceptions you have raised, sections 552.101, 552.114 and 552.130, as well as, the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") may demonstrate compelling reasons to overcome the presumption of openness. *Id.* Open Records Decision No. 150 (1977).

You have submitted Exhibit B, which consists of pages 1, 2 and 3 of the district's August 5, 1996 administrative procedures for reporting critical incidents including a sample of a critical incident report. You characterize Exhibit B as "copies of the documents containing the information the district claims is protected under the Act." We have reviewed the information submitted and the district's arguments regarding the exceptions to disclosure which it claims. It appears that the district does not argue against disclosure of the documents it has submitted, but rather argues against disclosure of the requested incident reports. The district has failed to submit to this office the information for which it asserts its exceptions to disclosure and which is responsive to the request for information. Gov't Code §552.301. As a result, this office cannot make a determination of the applicability of the mandatory exceptions except to make the following observations.

FERPA is incorporated into the Act by section 552.026 of the Government Code which governs the release of student-identifying information. Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA, however, was amended to provide that the term "education records" does not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement."

day after the date of its receipt of the request for information.

Section 552.130(a) of the Government Code applies to all records maintained by governmental bodies, not just motor vehicle records. Section 552.130(a) reads as follows:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

1. a motor vehicle operator's or driver's license or permit issued by an agency of this state;
2. a motor vehicle title or registration by an agency of this state; or
3. a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

This type of information is made confidential under section 552.130(a).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In determining whether a record concerning juvenile criminal conduct is subject to public disclosure, we must consider whether the record is a record of a law enforcement agency and also consider the date of the juvenile conduct. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). This office concluded in 1996 that section 58.007 of the Family Code, as enacted by the Seventy-fourth Legislature, does not make confidential juvenile law enforcement records relating to conduct that occurred on or after January 1, 1996. Open Records Decision No. 644 (1996). The Seventy-fifth Legislature, however, amended section 58.007 to once again make juvenile law enforcement records confidential, effective September 1, 1997. Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187 (Vernon). Consequently, law enforcement records pertaining to juvenile conduct that occurred between January 1, 1996 and September 1, 1997, are not subject to the confidentiality provisions of either the former section 51.14(d) or the current section 58.007(c) of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, however, are confidential under section 58.007.

In conclusion, we caution that distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352. 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.

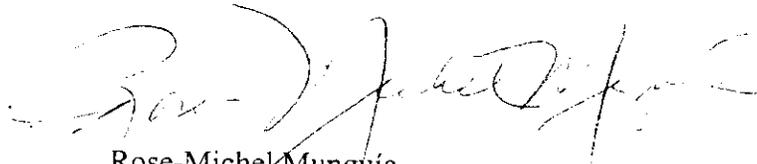
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 133439

Encl. Submitted documents

cc: Mr. Thomas Stack
Texas Justice Foundation
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San Antonio, Texas 78229
(w/o enclosures)