



April 26, 2000

Mr. William T. Armstrong III  
Jeffers & Banack, Incorporated  
745 East Mulberry, Suite 900  
San Antonio, Texas 78212-3166

OR2000-1622

Dear Mr. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135205.

The North East Independent School District ("NEISD"), which you represent, received a request for a copy of a tape recording of a hearing conducted by the Board of Trustees in a closed session board meeting. You assert that the requested tape is exempt from disclosure under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure information deemed confidential by law. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order issued under Subsection (b)(3).*" (Emphasis added.). Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). You state that the hearing, which was conducted as the final stage in a grievance filed by the requestor, was held in "closed session because it involved a grievance complaining of the actions of an employee of NEISD." See Gov't Code § 551.074(a)(2) (governmental body not required to conduct open meeting to hear a complaint or charge against officer or employee). Therefore, NEISD must withhold the tape recording from public disclosure under section 552.101 in conjunction with section 551.104(c) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and 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,



Julie Reagan Watson  
Assistant Attorney General

JRW/cwt

Ref: ID#135205

cc: Ms. Shelly Cameron  
4807 Roxton  
San Antonio, Texas 78247  
(w/o enclosures)