



May 12, 2000

Mr. D. Craig Wood
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Attorneys at Law
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San Antonio, Texas 78212-3166

OR2000-1861

Dear Mr. Wood:

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# 135101.

The Northside Independent School District (the “district”) received a request for information relating to a particular incident as well as various district policies and procedures. We understand that you have provided for the requestor’s access to the policies and procedures sought. You seek our decision as to whether to withhold the information relating to the incident in question under section 552.101 of the Government Code.

We note initially that you have, to date, not submitted copies of the information at issue. Section 552.301(e)(1)(D) of the Government Code requires that a governmental body seeking an attorney general decision as to whether it may withhold information submit to this office copies of the requested information or representative samples thereof no later than the 15th business day after it received the request. Section 552.302 provides that if a governmental body fails to timely submit the materials required by section 552.301, the requested information is presumed open and must be released unless there is a compelling reason to withhold the information. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You advise that the district considers the information at issue to be confidential under section 261.201 of the Family Code. Section 261.201(a) provides:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

We understand you to advise that you have not submitted the information at issue because you believe its confidentiality under section 261.201(a) precludes furnishing it to this office for purpose of obtaining a ruling under the Public Information Act. We disagree. Section 261.201(a) permits disclosure consistent with state law. The Public Information Act, a state law, clearly requires that information a governmental body seeks to withhold from a requestor be submitted to this office for purposes of our making a decision as to whether the information may be so withheld. *See* Gov't Code § 552.301(e)(1)(D).

As you have not provided to this office the information at issue, we have no basis for determining whether or to what extent there is a compelling reason under section 552.302 for withholding the information. Therefore, pursuant to section 552.302 of the Government Code, we have no choice but to rule that the information at issue be released. If you believe that the information is confidential and may not lawfully be released, you must challenge this ruling in court as discussed below. Please note that section 552.352 provides for criminal penalties for release of confidential 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.

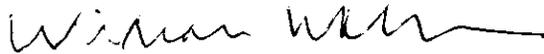
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 135101