



June 16, 2000

Ms. Cari L. Curtis
McGinnis, Lochridge & Kilgore, L.L.P.
1221 McKinney Street
Houston, Texas 77010

OR2000-2335

Dear Ms. Curtis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136214.

The Spring Branch Independent School District (the "district"), which you represent, received two requests, dated February 9, 2000, and April 20, 2000, from the same requestor, for information regarding an incident on a school bus. Another request, dated March 21, 2000, asked for the same information as well as personnel records, district law enforcement records for the past five years, complaints made to the school for the past five years, *et cetera*. You state that you have released some of the requested information, but claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As to the March 21, 2000, request, you furnished the requestor on April 10, 2000, with an itemization of charges you would assess to copy the information, as provided by section 552.2615 of the Government Code. Because the requestor did not respond to that itemization within the mandated 10 days, that request is considered to have been withdrawn. Gov't Code § 552.2615(b).

As to the request dated February 9, 2000, you tell us that most of the requested information has been provided, but that you seek to withhold the district's police department report regarding the school bus incident. On February 10, 2000, the principal informed the requestor in writing that the requestor would need to seek the report directly from the district's police department. A request for public information is properly made to the governmental body, in this case, the district. *See* Gov't Code §552.301. The principal, as agent for the public information officer of the district, is charged with responding to a request

for information in accordance with section 552.301 of the Government Code.¹ Therefore, a request addressed to the principal is a request to the district as a whole, including the district's police department. Such a request encompasses information possessed by the police department.

The district did not request a ruling from this office as to the February 9, 2000, request for information. The district did submit a request for a ruling as to the March 21, 2000, request for essentially the same information. That request for a ruling arrived at this office April 13, 2000, and was postmarked April 10, 2000. Subsections 552.301(a) and (b) of the Government Code provide:

(a) 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.

(b) 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 written request.

In this case, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(b). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The fact that information is made confidential by statute is such a compelling reason. You claim that the submitted records are confidential under section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which

¹"Each department head is an agent of the officer for public information for the purposes of complying with this chapter." Gov't Code § 552.202.

a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Section 58.007(c) makes confidential law enforcement records concerning juvenile conduct that occurred on or after September 1, 1997. Since the records at issue are such juvenile law enforcement records, and there appear to be no applicable exceptions to their confidentiality, you must withhold the information in its entirety pursuant to section 58.007(c).

Because section 58.007(c) of the Family Code is dispositive, we do not address your section 552.108 claim. 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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/ljp

Ref: ID# 136214

Encl. Submitted documents

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