



June 26, 2000

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2000-2423

Dear Mr. De Los Santos:

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# 138100.

The Northside Independent School District (the “district”), which you represent, received a request for “a copy of the tape from the Board meeting” held on May 25, 2000. You claim that the audiotape requested is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.¹

Section 552.101 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. Section 551.104 of the Government Code, a provision of the Open Meetings Act, makes the tape of a properly closed meeting confidential. An audiotape recording of a closed meeting is available for public inspection and copying only under a court order. Gov’t Code § 551.104; Open Records Decision No. 495 at 4 (1988) (audiotape recordings of closed meetings are confidential unless court

¹We note that this office did not review the responsive audiotape recording since it was not submitted, nor does it have authority to do so. Open Records Decision No. 495 at 4 (1988) (Open Meetings Act provisions “remove certified agendas and tapes of executive sessions from review by the attorney general under the Public Information Act”).

rules otherwise).² Furthermore, section 551.146 provides that it is a criminal offense to disclose to a member of the public an audiotape recording of a closed meeting. Thus, section 551.146, in conjunction with section 552.101, protects from public disclosure an audiotape recording of a properly closed meeting held under the Open Meetings Act. We agree that the audiotape recording of the district's closed executive session is confidential by law. Accordingly, you must withhold the requested information under section 552.101 as information deemed confidential by law.

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).

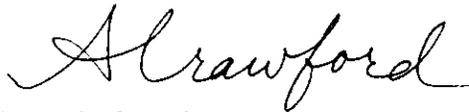
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

²However, records that were discussed in a closed meeting and records created in a closed meeting, other than a certified agenda or tape recording, are not made confidential by chapter 551 of the Government Code. Open Records Decision No. 605 (1992).

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,

A handwritten signature in cursive script that reads "A Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/ljp

Ref: ID# 131800

cc: Ms. Liz Nichols
2800 Hayden Hollow
San Antonio, Texas 78251