



September 6, 2000

Robert A. Schulman
Schwartz & Eichelbaum
517 Soledad Street
San Antonio, Texas 78205

OR2000-3444

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138735.

The Grape Creek Independent School District (the "district"), which you represent, received a request for the election records of the district's recent bond election on held June 3, 2000. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.

Initially, we note that you acknowledge that your request to this office is later than the statutorily mandated time period in which a governmental body must submit requests for decisions to this office. *See* Gov't Code §552.301(b). Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. You state that the district received the requestor's written request for information on June 15, 2000. You did not request a decision from this office until July 6, 2000, more than ten business days after the district's receipt of the requestor's written request. Therefore, we conclude that the district failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App. -- Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to

overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Here, section 552.101 presents a compelling reason to overcome the presumption of openness.

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 66.058(a) of the Election Code provides for the confidentiality of election records. Section 66.058(a) requires, with exceptions which do not appear to be applicable here, that precinct election records be preserved for 60 days after the election date. Subsection (b) of the section requires that voted ballots be preserved in the locked ballot box or sealed envelope in which they are delivered to the custodian of election records and that, "[e]xcept as permitted by this code, a ballot box containing voted ballots or an envelope containing voted ballot stubs may not be opened during the preservation period." *See also* Elec. Code §§ 213.007 (access to voted ballots for recounts), 221.008 (access to voted ballots for election contest), 1.013 (election records may be destroyed after preservation period unless election contest or criminal investigation or proceeding in connection with election is pending). Thus, the requested election records are not subject to disclosure under chapter 552 of the Government Code until the preservation period has run. The preservation period in the instant case is sixty days after the June 3, 2000 election. *See* Election Code § 66.058(a). As this time period has now elapsed, the district must provide the requestor with access to or copies of the requested information. *See* Open Records Decision No. 505 at 4 (1988) (a request made during the preservation period to inspect voted ballots must be treated as a request to inspect the ballots when the retention period expires).

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.

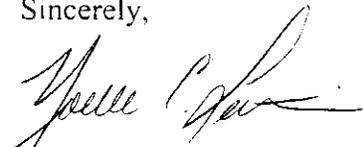
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 138735

Encl. Submitted documents

cc: Ms. Billie B. McClure
9850 Caribou Trail
San Angelo, Texas 76901
(w/o enclosures)