



December 6, 2001

Ms. Bertha Bailey Whatley
Fort Worth I.S.D.
100 N. University Drive, Suite NW 130
Fort Worth, Texas 76107

OR2001-5669

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155778.

The Fort Worth Independent School District (the "district") received a request for the following information for the school years 1999 - 2000, 2000 - 2001, 2001- 2002, to date:

1. All checks made payable to any and all concrete vendors for any and all projects, including but not limited to the current bond program, and regardless of whether the job was contracted by bid or by other means.
2. Any and all checks signed by Eldon Ray that were drawn against the bond package funds, if such checks exist.
3. Any and all checks that were signed by representatives acting on behalf of the school district, and drawn on the bond package funds, if such checks exist.
4. The established rules of bidding for construction, repair, remodeling or any kind of maintenance work for the district, and any variations to the rule, such as waivers or allowances for jobs that might be beneath a certain dollar threshold that could be contracted out without bids. If such an allowance exists, please provide the written documentation.
5. For such construction or maintenance jobs that were let under any waiver of bidding procedures, provide the name of the job or a job description, its location, the name of the contractor and the dollar amount of the initial contract and the dollar amount of the final billed job.

6. Provide the names of all concrete vendors currently or formerly under contract with the FWISD.
7. The dollar amount of funds from the bond package that were designated for food service.
8. The dollar amount that has been spent or obligated to be spent on food service.
9. The dollar amount currently in the food service portion of the bond package budget.

You indicate that the district does not have documents responsive to request numbers 2 and 5. You also indicate that you will release to the requestor documents responsive to request numbers 4, 7, 8, and 9. We note that you have neither produced to this office nor have you indicated that you will release information responsive to request number 6. We assume that you have already released this information. If not, you must do so. Gov't Code §§ 552.301, .302. You claim that the information responsive to request numbers 1 and 3 is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office a copy of the specific information requested or representative samples within fifteen business days of receiving an open records request, labeled to indicate which exceptions apply to which parts of the documents. You did not submit to this office copies of the information responsive to request numbers 1 and 3 or representative samples.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. You have not shown a compelling interest to overcome the presumption that the information at issue is public. Accordingly, the district must release the requested information.

In addition, we note that the information responsive to request numbers 1 and 3 is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The district must release any requested information that falls within subsection (3) of section 552.022(a), unless that information is expressly confidential under other law. Section 552.108 of the Government Code is a discretionary exception under the Public Information Act and does not constitute "other law" for the purposes of section 552.022. *See* Open Records Decision No. 177 at 3 (1977) (stating that governmental body may waive statutory predecessor to section 552.108). Therefore, the information responsive to request numbers 1 and 3 is public information under section 552.022(a)(3) and would not be excepted from public disclosure under section 552.108.

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); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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 black ink, appearing to read "Yen-Ha Le", with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/sdk

Ref: ID# 155778

c: Ms. Betty Brink
Fort Worth Weekly
1204 West 7th Street
Fort Worth, Texas 76102