



December 10, 2001

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

OR2001-5757

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# 155889.

The Fort Worth Independent School District (the "district") received two requests for information pertaining to payments made for services related to bond projects. One of the requestors also seeks records related to the district's recent internal audit of bidding practices. While we originally assigned two identification numbers to these requests,¹ we have combined these requests into one ruling with the identification number listed above. You have made some of the requested information available to the requestors, and indicate that a portion of the requested information does not exist. You claim that the remaining responsive information is excepted from disclosure under sections 552.103, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, with regard to the requested information pertaining to payments made for bond projects, we note that a governmental body that wishes to withhold requested information must provide to the Attorney General a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the copy, no later than fifteen days after the governmental body receives the written request for information. Gov't Code § 552.301(e). If the governmental body does not comply with the requirements of Government Code section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). Section 552.103 is a

¹The other identification number assigned was ID# 156238.

permissive exception intended to protect only the interests of the governmental body. *See* Open Records Decision No. 473 (1987) (city's failure to meet 10-day deadline waived protections of section 552.103 and 552.111). Therefore, section 552.103 does not provide a compelling reason to overcome the presumption of openness. However, the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision No. 586 (1991).

You assert that the documents have been forwarded to the Federal Bureau of Investigation and that the matter is still under active investigation. You further state that the F.B.I. has informed the district that it would like for the district to withhold the requested information pertaining to bond projects in its entirety. However, you have not provided the responsive information to this office as required. In the absence of the responsive information, we are unable to determine whether the ongoing investigation constitutes a compelling reason sufficient to overcome the presumption of openness that results from the district's failure to comply with section 552.301. Thus, we have no choice but to order the information relating to payments made for bond projects released per section 552.302 of the Government Code.² If you believe this information is confidential and therefore may not be lawfully released, you must challenge the ruling in court as outlined below.

In addition, we note that section 552.022 of the Government Code 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). Therefore, 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(a)(3). *See* Open Records Decision No. 177 at 3 (1977) (stating that governmental body may waive statutory predecessor to section 552.108). Therefore, any information falling within the ambit of section 552.022(a)(3) would not be excepted from public disclosure under section 552.108.

²The information to be released is the information which you state is responsive to the request items that you identify as 2h and 2j of the first request date September 20, 2001, and to request items one and two from the second request dated October 5, 2001.

We will next address your argument under section 552.116 for the information responsive to the request for the district's recent internal audit of bidding practices. You inform us that the district provided the requestor with the district's internal audit report of its bidding practices, but that the requestor subsequently clarified in a telephone conversation that he also sought the working papers associated with the audit. *See* Gov't Code § 552.222(b). Section 552.116 of the Government Code, as amended by the Seventy-sixth Legislature, provides in relevant part:

(a) An audit working paper of an audit of the *state auditor or the auditor of a state agency or institution of higher education* as defined by Section 61.003, Education Code, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] by this section.

Gov't Code § 552.116(a) (emphasis added). Because the district is neither the state auditor nor a state agency or institution of higher education, section 552.116 is inapplicable to the district. Accordingly, you may not withhold the documents you have marked as "Confidential Enclosure 1" under section 552.116, and they must be released to the requestor.

To summarize, the district may not withhold the requested information under sections 552.103, 552.108 or 552.116, and therefore it must be released to the requestors.

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).

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/sdk

Ref: ID# 155889

Enc. Submitted documents

c: Ms. Betty Brink
Fort Worth Weekly
1204 West 7th Street
Fort Worth, Texas 76102
(w/o enclosures)

Mr. Miles Moffeit
Star Telegram
400 West 7th Street
Fort Worth, Texas 76102
(w/o enclosures)