



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 7, 2003

Ms. Lisa B. Silvia  
Fort Worth Independent School District  
100 North University Drive  
Fort Worth, Texas 76107

OR2003-5532

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185948.

The Fort Worth Independent School District (the "district") received a request for forms pertaining to requests and approvals for overtime, time cards, and transmittal reports related to overtime payments to fifteen named individuals in 2000, 2001, and 2002. You state that the district has provided the portion of the requested records pertaining to the "2002 - 2003 time period." However, you state that the remaining requested information is in the possession of the Federal Bureau of Investigation ("FBI") pursuant to a grand jury subpoena. You also contend that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your comments and reviewed all of the submitted information.

You contend that the requested information pertaining to the time period from 2000 through 2001 is not in the possession of the district and is unavailable for the district to produce in response to the present request. We note that the Public Information Act (the "Act") generally does not require a governmental body to obtain information not in its possession. Open Records Decision No. 558 (1990). However, in addition to encompassing information in the physical possession of a governmental body, the Act applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body and the governmental body has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987) (Act applies to information in possession of consultant acting as agent of governmental body). Thus, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989). In this case, you state that the requested records relating to the 2000-2001

time period were handed over to the FBI under subpoena in connection with an ongoing criminal investigation. Thus, you state that the district no longer has physical possession of these records. Furthermore, you state that the FBI and the United States Department of Justice have denied the district access to the records at issue. Thus, based on your representations, we determine district does not have a right of access to the remaining requested records. We therefore conclude that the requested records pertaining to the time period of 2000 through 2001 are not subject to disclosure under the Act, and that the district need not further respond to the present request. Based on this finding, we do not reach your claimed exceptions to disclosure.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/lmt

Ref: ID# 185948

c: Ms. Jennifer Autrey  
Fort Worth Star-Telegram  
400 West 7<sup>th</sup> Street  
Fort Worth, Texas 76102