



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2003

Ms. Carrie Galatas
General Counsel
Conroe Independent School District
3205 West Davis
Conroe, Texas 77304-2098

OR2003-5679

Dear Ms. Galatas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185946.

The Conroe Independent School District (the "district") received a request for three categories of information related to a proposed district stadium and Moorhead stadium. You state that the district has provided the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code.¹ We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

A governmental body may withhold attorney work product under section 552.111 of the Government Code if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. *See* Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created for trial or in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from

¹ Although you claim that the information that you have submitted to us for review as Exhibit B is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with rule 192.5 of the Texas Rules of Civil Procedure, we note that the appropriate exception to disclosure to assert when claiming that information requested of a governmental body is protected from disclosure under the attorney work product privilege is section 552.111 of the Government Code. *See* Open Records Decision No. 677 at 9 (2002) (appropriate law for claim of attorney work product privilege for information not subject to section 552.022 is Gov't Code § 552.111). Accordingly, we will address your section 552.101 claim with respect to Exhibit B under section 552.111 of the Government Code.

the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery or release believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See id.* at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. After carefully reviewing your representations and the information that you have submitted to us for review as Exhibit B, we find that the district has failed to adequately demonstrate that any portion of Exhibit B was created for trial or in anticipation of litigation. Accordingly, we conclude that the district may not withhold any portion of Exhibit B as attorney work product under section 552.111 of the Government Code.

You also claim that the information that you have submitted to us for review as Exhibit C is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.² Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). We note that section 551.146 penalizes the unlawful disclosure of a certified agenda or tape recording of a lawfully closed meeting as a Class B misdemeanor and makes the person responsible for disclosure liable for damages to a person injured or damaged by the disclosure. *See* Gov't Code § 551.146. You acknowledge that no portion of Exhibit C constitutes a certified agenda of a closed session meeting of the district's Board of Trustees. Accordingly, we conclude that the district may not withhold any portion of Exhibit C under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

We note, however, that Exhibit B contains an e-mail address that may be excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Section 552.137 requires the district to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically

² Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

with the district, unless the members of the public with whom they are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. Accordingly, we conclude that the district must withhold the e-mail address that we have marked within Exhibit B pursuant to section 552.137 of the Government Code, unless the member of the public with whom it is associated has affirmatively consented to its release.

In summary, the district must withhold the e-mail address that we have marked within Exhibit B pursuant to section 552.137 of the Government Code, unless the member of the public with whom it is associated has affirmatively consented to its release. The district must release the remaining submitted information to the requestor in its entirety.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 185946

Enc. Marked documents

c: Ms. Nancy Flake
The Courier
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(w/o enclosures)