



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

November 3, 2003

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

OR2003-7884

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# 190440.

The Fort Worth Independent School District (the "district") received two requests from the same requestor for information contained in the notary public books of two named district employees. We understand the district to claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted. We also have considered the comments that we received from the requestor.¹

We first note that these requests do not encompass some of the submitted information. The requestor seeks access to "all pages within [the employees'] notary book(s) which contain one or more entries dated Jan. 1, 1997, or later." Thus, the entries in the employees' notary books that are dated prior to January 1, 1997 are not responsive to these requests. This decision is applicable only to the requested information. This decision is not applicable to the non-responsive information, and that information need not be released.²

¹See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

²See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Next, we address the district's failure to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

The district concedes that it did not request our decision with the ten-business-day period prescribed by section 552.301(b). Likewise, the district did not timely comply with section 552.301(e). Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). We understand the district to invoke the "special circumstances" aspect of common-law privacy under section 552.101 of the Government Code. *See generally* Open Records Decision No. 169 (1977). A claim under section 552.101 can provide a compelling reason for non-disclosure under section 552.302.

In this instance, however, public disclosure of the requested information is governed by law outside the Public Information Act (the "Act"), chapter 552 of the Government Code. Chapter 406 of the Government Code is applicable to notaries public. *See* Gov't Code § 406.001 *et seq.* Section 406.014 provides in part:

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

Id. § 406.014(b)-(c). You inform us that the requested information is contained in the notary public books of the two named district employees. This information is expressly made

public by section 406.014 of the Government Code. Information that a statute outside the Act expressly makes public generally may not be withheld from disclosure under an exception contained in the Act. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the district may not withhold any of the requested contents of the employees' notary books under section 552.101 of the Act. The district must release that information 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 190440

Enc: Submitted documents

c: Mr. Tom Purcell
P.O. Box 2056
Roanoke, Texas 76262
(w/o enclosures)