



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2005

Mr. M. Gustave Pick
Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C.
201 East Main Drive, Suite 1100
El Paso, Texas 79901

OR2005-01130A

Dear Mr. Pick:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#217582.

On behalf of the Ysleta Independent School District, which you represent, you ask this office to examine Open Records Letter No. 2005-01130 (2005). We note that section 552.301 of the Government Code provides that a governmental body is prohibited from asking for a reconsideration of the attorney general's decision. *See* Gov't Code § 552.301(f). However, where this office determines that the decisional process under sections 552.301 and 552.306 has resulted in an incorrect ruling, we will correct the previously issued ruling. As we have determined that Open Records Letter No. 2005-01130 (2005) is incorrect, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2005-01130 (2005) and serves as the correct ruling.

The Ysleta Independent School District (the "district"), which you represent, received two requests from the same requestor for 21 categories of information. The first request is for information relating to (1) employees whose contracts were not renewed or who were allowed to resign in lieu of termination; (2) the 2004-2005 contract and confidentiality agreement used by the district and its employees; (3) area convocations; (4) Equal Employment Opportunity Commission ("EEOC") charges and employee grievances; and (5) a trip taken by the superintendent. The second request is for information relating to (1) certain return to work and employee safety incentive programs; (2) the risk management department; (3) affidavits written by risk management employees; (4) OH&S team meetings; (5) information received by the risk management coordinator from OH&S employees; and

(6) appraisal instruments involving five named risk management employees. You indicate that some of the requested information either has been released or is otherwise available to the requestor. You also indicate that some of the requested information does not exist.¹

You have submitted information that you seek to withhold under sections 552.101, 552.102, and 552.117 of the Government Code.² You also inform us, however, and have submitted documentation demonstrating, that the district sent the requestor a written itemized statement of estimated charges with respect to both of these requests for information. *See* Gov't Code § 552.2615. You further inform us, and have submitted documentation demonstrating, that the requestor did not respond to the district's statement of estimated charges within the time prescribed by section 552.2615(b). Based on your representations and our review of the submitted documentation, we conclude that these requests for information were withdrawn by operation of law. *See id.* § 552.2615(b). Accordingly, the Act does not require the district to release any other information that may be responsive to these requests. In light of this conclusion, we need not address your other arguments against 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).

¹We note that the Act does not require the district to release information that did not exist when it received this request or to create responsive information. *See Econ. 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note that your assertion of section 552.117 was not timely. *See* Gov't Code § 552.301(b). However, section 552.117 is a mandatory exception to disclosure that may not be waived. *See id.* §§ 552.007, .301, .302, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). However, in submitting no arguments in support of your section 552.111 claim, you waived that exception. *See* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). Section 552.021, which you also cite, provides for the public availability of information held by a governmental body and is not an exception to public disclosure. *See* Gov't Code § 552.021.

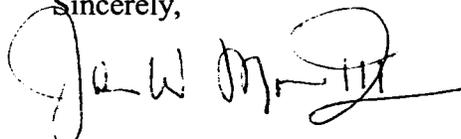
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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. 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 "James W. Morris, III". The signature is fluid and cursive, with the first name "James" being the most prominent.

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

JWM/sdk

Ref: ID# 217582

c: Mr. Mario E. Gutierrez
12405 Sun Terrace
El Paso, Texas 79938
(w/o enclosures)