



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2006

Ms. Laura C. Rodriguez  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2006-02158

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 247015.

The East Central Independent School District (the "district"), which you represent, received a request for information relating to an employee grievance hearing, including open-session remarks. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments. We assume that the district has released any other information that is responsive to this request, to the extent that such information existed when the district received the request.<sup>1</sup> If not, then any such information must be released immediately. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Initially, we address the district's obligations under section 552.301 of the Government Code. This section 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 provides in part that the governmental body must ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth

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<sup>1</sup>We note that the Act does not require the district to release information that did not exist when it received this request or 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).

business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). If a governmental body fails to comply with section 552.301 in requesting an attorney general decision, 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. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). In this instance, you have not demonstrated that the district complied with section 552.301(b) in requesting this decision; therefore, the information at issue is presumed public under section 552.302. This statutory presumption can generally be overcome when the information in question is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will consider your arguments.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses information that is protected by other statutes. Section 551.104(c) of the Open Meetings Act, chapter 551 of the Government Code, 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).*” (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). You seek to withhold a tape recording of a closed meeting held by the board of trustees to hear an employee grievance. Based on your representations, we agree that the district must withhold the tape recording from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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).

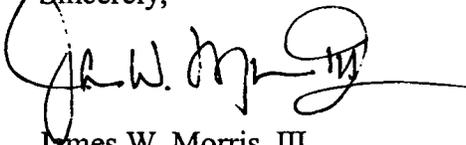
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 247015

c: Mr. Gabriel C. Gomez  
13852 Ladd Road  
Atascosa, Texas 78002