



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 14, 2006

Ms. Lana Marie Paris  
Human Resources Director  
Weslaco Independent School District  
P. O. Box 266  
Weslaco, Texas 78599-0266

OR2006-02528

Dear Ms. Paris:

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# 245179.

The Waslaco Independent School District (the "district") received a request for the minutes of a district board meeting held in a closed session on December 12, 2005. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. We have considered the exceptions you claim.

Initially, we must address the district's procedural obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). Furthermore, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e).

The copy of the written request for information indicates that it was received by the district on December 21, 2005. The tenth and fifteenth business days following the district's receipt of this request were January 5, 2006 and January 12, 2006, respectively. The district did not, however, request a ruling from or submit the required documents to this office until January 20, 2006. We therefore find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Sections 552.103 and 552.104 of the Government Code are discretionary exceptions to disclosure that protects the governmental body's interests and may be waived. Thus, these sections are not compelling reasons to withhold information from the public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 592 (1991) (governmental body may waive section 552.104), 522 (1989) (discretionary exceptions in general). Accordingly, the district may not withhold the requested information under section 552.103 or 552.104 of the Government Code.

We note, however, that the requested information is subject to section 552.101 of the Government Code, which is an exception that can provide a compelling reason to withhold information.<sup>1</sup> Section 552.101 excepts from disclosure information deemed confidential by

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

law. Gov't Code § 552.101. Section 551.104(c) 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). In addition, minutes of a closed meeting are confidential. See Open Records Decision No. 60 (1974) (closed meeting minutes are confidential under predecessor to section 551.104); *see also* Open Records Decision Nos. 563 (1990) (minutes of properly held executive session are confidential under OMA); Open Records Decision No. 495 (1988) (information protected under predecessor to section 551.104 cannot be released to member of public in response to open records request). Therefore, the district must withhold the requested minutes of the district's closed meeting.

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 ten 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).

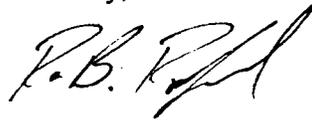
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 245179

c: Mr. Jorge E. Ramirez  
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