



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2006

Ms. Ann Greenberg  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P. O. Box 2156  
Austin, Texas 78768

Ms. Christine Badillo  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P. O. Box 2156  
Austin, Texas 78768

OR2006-03935

Dear Ms. Greenberg and Ms. Badillo:

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# 246675.

The Lake Travis Independent School District (the "district"), which you represent, received a request for "[a] copy of any and all written, printed and electronic logs of any and all public information requests to include the name of the requestor that were submitted to the [district] between the inclusive dates of September 14, 2005 until January 29, 2006." You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

---

<sup>1</sup>Although you initially raised the Family Educational Rights and Privacy Act of 1974 ("FERPA"), you have submitted no arguments under this federal law. See Gov't Code §§552.026 (incorporating FERPA into the Act), .101 (excepting from disclosure information considered to be confidential by law including federal statutes); see also Open Records Decision No. 634 (1995) (concluding that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.101 of the Government Code without the necessity of requesting an attorney general decision as to that exception); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

Initially, you inform us that a portion of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-03869 (2006). See Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). You have not indicated that the pertinent facts and circumstances have changed since the issuance of Open Records Letter No. 2006-03869. Consequently, we determine that the district must continue to follow our ruling in Open Records Letter No. 2006-03869 with respect to the information at issue in that ruling. We now address the arguments you raise for the submitted information.

Section 552.111 of the Government Code excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” This section encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as:

- (1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or
- (2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5(a). A governmental body seeking to withhold information under this exception bears the burden of demonstrating that the information was created or developed for trial or in anticipation of litigation by or for a party or a party’s representative. TEX. R. CIV. P. 192.5; ORD 677 at 6-8. In order for this office to conclude that the information was made or developed in anticipation of litigation, we must be satisfied that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and created or obtained the information for the purpose of preparing for such litigation. *Nat’l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial

chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204; ORD 677 at 7.

You state the submitted information was prepared by the district’s attorneys and their representatives and contains these individuals’ mental impressions, conclusions, opinions, or legal theories. You further state that the submitted information was created in anticipation of litigation and inform us that litigation was pending between the district and the requestor on the date the district received this request. Based upon your representations and our review of the information at issue, we conclude that the district may withhold the submitted information as attorney work product under section 552.111.

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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 246675

Enc. Submitted documents

c: Mr. David Lovelace  
103 Galaxy  
Austin, Texas 78734  
(w/o enclosures)