



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2006

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2006-04191

Dear Ms. Perry:

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# 251758.

The DeSoto Independent School District (the "district"), which you represent, received a request for (1) a recording of a specified executive session and (2) a specified vote count. You state that the vote count has been released, but claim that the district is precluded from releasing the tape pursuant to section 551.104 of the Government Code. We have considered your arguments. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

You inform us that the requested recording consists of a videotape recording of a closed session portion of a district board meeting. 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)." 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)*. The requestor asserts that the meeting at issue was not properly "closed" for purposes of section 551.104. However, in *Open Records Decision No. 495 (1988)* this office determined that the attorney general lacks the

authority to make this determination for two reasons: chapter 551 of the Government Code (the "Open Meetings Act") provides the exclusive authority and procedure for challenging the confidentiality of tapes of executive sessions, and this office lacks the authority to enforce the Open Meetings Act. Accordingly, the district must withhold the requested recording from public disclosure pursuant to 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).

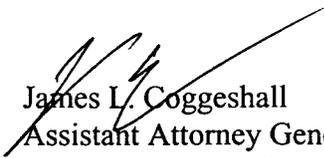
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 251758

Enc. Submitted documents

c: Mr. Maurice B. Simmons
701 Sycamore Drive
DeSoto, Texas 75115
(w/o enclosures)