



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2007

Ms. Angela H. Robinson
Law, Snakard & Gambill, P.C.
1600 West Seventh Street, Suite 500
Fort Worth, Texas 76102

OR2007-15487

Dear Ms. Robinson:

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# 295515.

The Tarrant County College District (the "district"), which you represent, received a request for information regarding all individuals, personnel, and positions of any level discussed during closed sessions of each board meeting where section 551.074 of the Open Meetings Act was invoked from January 2006 to the date of the request. You seek an opinion regarding whether the district must produce the documents requested. We have considered your argument, and 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).

Initially, you ask this office to determine whether the district is required to manufacture documents requested by the requestor. We note that only information which was in existence at the time the present request was received is subject to the Act. Governmental bodies need not create new documents in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.— San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the district has made a good faith effort to do so.

We understand that the district maintains certified agendas or tapes of closed sessions. We note that section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Gov't Code § 552.101.¹ This section encompasses information protected by other statutes. 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.² See Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. See Gov't Code § 551.146(a)-(b). 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 Open Meetings Act); ORD 495 (1988) (information protected under predecessor to section 551.104 cannot be released to member of public in response to open records request). Accordingly, if the requested information consists of a tape recording or certified agenda of a lawfully closed meeting, or of minutes of a closed meeting, then the requested information is confidential 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).

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

²The district is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. See Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to Gov't Code § 552.101).

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,



Allan D. Meeseey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 295515

Enc. Submitted documents

c: Mr. Bob Mhoon
3203 Caliente Court
Arlington, Texas 76017-2557
(w/o enclosures)