



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2011

Ms. Bertha Bailey Whatley
Chief Legal Counsel
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2011-10546

Dear Ms. Whatley:

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# 424650.

The Fort Worth Independent School District (the "district") received a request for a copy of the stenographic record for a specified hearing and copies of application packets, interview rating forms, interview tally forms, and the committee recommendation form for specified positions and a specified candidate. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note you have only submitted information responsive to the portion of the request seeking a copy of the stenographic record for a specified hearing. Therefore, to the extent information responsive to the remainder of the request existed at the time the district received the request for information, we assume you have released it to the requestor. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for

information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). You inform us the district received the instant request for information on April 28, 2011; therefore, the district's deadline under subsection 552.301(b) was May 12, 2011. The district requested this decision on May 18, 2011. Thus, the district did not comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will address your claim under this section.

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. This exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 551.104 of the Open Meetings Act for the submitted transcript. Section 551.104 provides, in part, “[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).” *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request.¹ *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); *see also* ORD 495 at 4. You state the submitted information is a transcript of a closed meeting. Upon review, we agree the district must withhold the

¹We note that the district is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

transcript of the closed meeting from the public pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

The requestor, however, claims a right of access to the information at issue. The requestor asserts that as a party to the proceeding at issue, he is not a "member of the public" and thus is entitled to the information at issue. However, we note that the requestor is seeking this information as a private citizen rather than in an official capacity that would grant him a right of access to this information. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). Accordingly, we determine that the requestor is a "member of the public" for the purposes of this request has no right of access to the information at issue.

In summary, the district must withhold the submitted transcript of the closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

You also ask this office to issue a previous determination allowing the district to withhold a transcript or minutes of closed session meetings of the district's board of education under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code without seeking a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); *see also* Open Records Decision No. 673 (2001). We note that this office issued a previous determination in Open Records Decision No. 684 (2009) that generally authorizes any governmental body subject to the Act to withhold a certified agenda and a tape of a closed meeting under section 552.101 in conjunction with section 551.104 of the Government Code without seeking a decision from this office. *See* ORD 684 at 5-6.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 424650

Enc. Submitted documents

c: Requestor
(w/o enclosures)